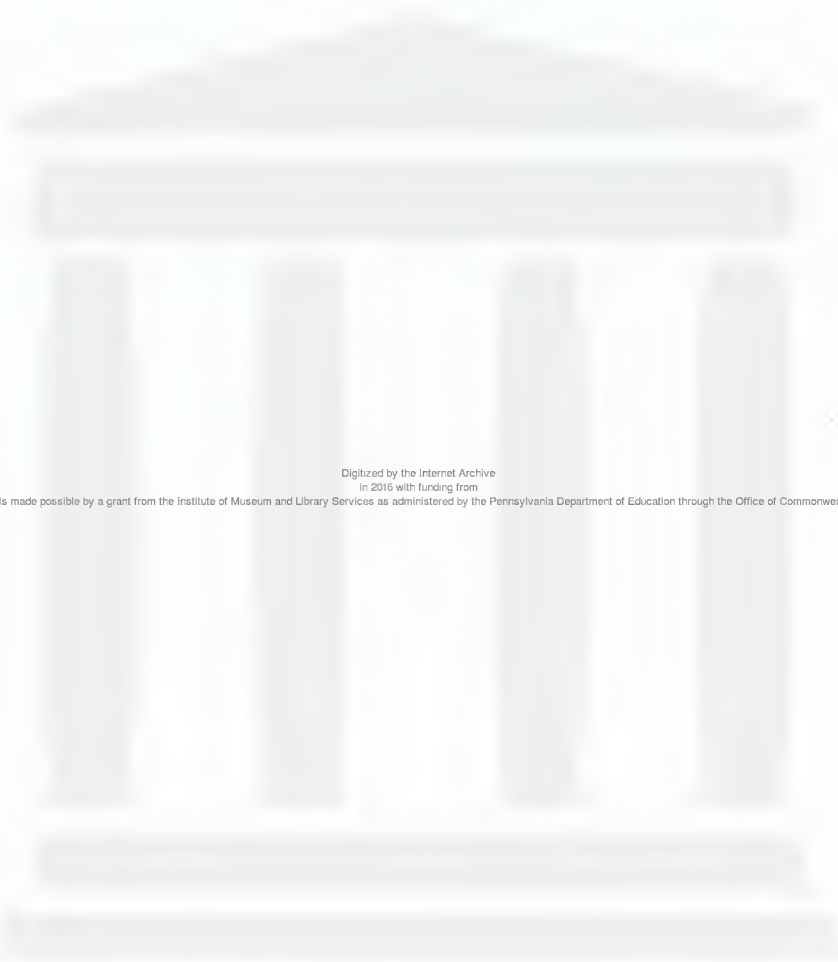

REPORT

OF THE

COMMISSIONERS

ON

UNIFORM STATE LAWS

TO THE

GOVERNOR OF PENNSYLVANIA.

WILLIAM H. STAAKE,
Chairman.

WALTER GEORGE SMITH,
C. LaRUE MUNSON,
Commissioners.

HARRISBURG, PA.:
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REPORT.

To His Excellency, the Honorable Samuel W. Pennypacker, Governor of the Commonwealth of Pennsylvania:

The undersigned, the Commissioners appointed by your Excellency, under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved the 31st day of March, 1905, which act was, in a measure, supplemental to a prior act of the 23d day of May, 1901, would respectfully report:

Two of the Commissioners attended the Fifteenth Annual Conference of the Commissioners on Uniform State Laws, held at Narragansett Pier, Rhode Island, August 18, 19, 21 and 23, 1905. The National Conference of Commissioners on Uniform State Laws is made up of Commissioners created by the different states, meeting in conference and organizing themselves into a national body for the better accomplishment of the work for which its members were appointed by the states. The Commissioners, usually three from each state, are appointed under the laws of the respective states creating them, usually for five years, with authority to confer with Commissioners of other states and recommend forms of bills or measures to bring about uniformity of laws in the execution and proof of deeds and wills, in the laws of bills and notes, marriage and divorce, and other subjects where such uniformity seems practicable and desirable. The officers of the National Conference consist of a President, Vice-President, Secretary, Treasurer and Assistant Secretary, elected annually. The time of this conference was largely taken up in the consideration of the Uniform Sales Act and of the Uniform Warehouse Receipts Act, hereinafter referred to in this report.

A constitution and by-laws were adopted to supersede the rules of the conference heretofore in force. The conference heartily approved the action of the State of Pennsylvania, and of its Governor, the Hon. Samuel W. Pennypacker, in calling a convention of representatives from the several states to meet in Washington, D. C., for the promotion of Uniform State Laws upon the subject of Divorce. As the work of this conference would be limited to the single subject of Divorce, much good to the general cause of uniformity of legislation was anticipated from an enlightened public opinion aroused by such a convention at the seat of government.

Commissioners were present at this conference from twenty states, and this conference, as well as the Sixteenth Conference was

attended by members of the American Bar Association, who were not Commissioners, but who were interested in the subjects debated by the conference.

Reports were received from the Committee on Commercial Law, reporting the Sales Act and the Warehouse Receipt Act.

The President of the Conference, in his annual address, called especial attention to the necessity of a uniform law upon the subjects of Marriage and Divorce, and commented upon the action of the Inter-Church Conference, at its meeting in Washington, D. C., on January 25 and 26, 1905, which Church Conference issued a second address and appeal to the Christian public on these subjects. He also referred to the draft of an act prepared by William H. Baldwin, of Washington, D. C., a member of the Board of Managers of the Associated Charities, on the subject of Desertion and Non-Support of a man's family being made a criminal offence, and providing for the extradition of offenders against such a law.

The President also presented an admirable digest of the decisions on the Negotiable Instruments Law in the different states of the Union, and commented on the Torrens System of Registration of Land Titles, recommending that the committee of the conference be authorized to cause a uniform law for such a system to be drafted.

The Committee on Purity of Articles of Commerce presented a report, but in view of the pending legislation in the National Legislature, they recommended that action by the conference should be delayed until its convention in the year 1906.

The Committee on a Uniform Corporation Law presented a report and recommended that the committee be continued as a standing committee of the conference, and that it be requested to continue the study of the subject, and report further upon it, from time to time, as they might be able to arrive at conclusions which would seem to them to make such report desirable.

Appended to the Annual Report of the conference were the forms of bills heretofore recommended by the conference, with the exception of the Negotiable Instruments Act, which was contained in the conference report for 1900, and of the drafts of the Sales Act and the Warehouse Receipts Act, which had been printed and distributed in separate pamphlets, as revised at the 1905 meeting. These acts, as endorsed and recommended, are hereinafter referred to.

The Commissioners appointed by your Excellency further report as follows:

That two of the Commissioners attended the Sixteenth Conference of Commissioners on Uniform State Laws, held at St. Paul, Minne-

sota, August 22, 24 and 25, 1906. Sixteen conferences have so far been held; the first, at Saratoga for three days, beginning August 24, 1892, and the sixteenth at St. Paul, Minnesota, on August 22, 24 and 25, 1906.

The time of the Sixteenth Conference was largely taken up in the further consideration of the Uniform Sales Act drafted by Prof. Samuel Williston, of the Harvard Law School, and the Uniform Warehouse Receipts Act, drafted by Prof. Williston and Barry Mohun, Esq., author of a well-known work on this subject. They were adopted, and it was voted to recommend them for passage by the legislatures of the several states. Copies of these acts are hereunto appended, marked respectively Exhibits "A" and "B."

Prof. Williston was further employed to draft an act to make uniform the Law of Certificates of Stocks. The Committee on Commercial Law submitted drafts of a Bills of Lading Act and of a Partnership Act, the latter the work of Prof. James Barr Ames, the Dean of the Law School of Harvard University. These two acts, copies of which are also hereunto appended, marked Exhibits "C" and "D," were printed and distributed among the Commissioners, in order to obtain expert comment and criticism and to facilitate the perfecting of these measures before their final adoption by the conference.

At this Sixteenth Conference, the constitution and by-laws adopted at the meeting of the Fifteenth Conference at Narragansett Pier, in the State of Rhode Island, in 1905, were amended by adding to the list of standing committees, a Committee on Banks and Banking, and by providing that all of the officers of the conference, except the Assistant Secretary should be chosen from the Commissioners authorized to participate in the conference.

The following states, territories and districts have appointed Commissioners to the conference:

Arkansas, Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, Washington and Wisconsin.

At the Sixteenth Annual Conference, there were Commissioners present from the following states, territories and districts:

Alabama, Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Massa-

chusetts, Minnesota, Nebraska, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Wisconsin.

Reference was made by the President of the Conference, the Hon. Amasa M. Eaton, of Rhode Island, to the proceedings of the National Congress on Uniform Divorce Laws which met at Washington, in the District of Columbia, February 19 to 22, 1906, and which more recently met in Philadelphia, in this Commonwealth, on the 13th and 14th days of November, 1906, at which last meeting a Uniform Divorce Law was adopted and recommended to the various states for enactment. A report of the proceedings of this Congress has been made to your Excellency by the Commissioners for the Codification of the Divorce Laws of Pennsylvania, who, with your Excellency, were made the delegates to the Congress.

At the Sixteenth Conference of the Commissioners, the Hon. Amasa M. Eaton, of Rhode Island, was elected President; John C. Richburg, of Illinois, Vice-President; Talcott H. Russell, of Connecticut, Treasurer; and Charles Thaddeus Terry, of New York, Secretary. These officers, together with William H. Staake, of Pennsylvania, Francis B. James, of Cincinnati, Ohio, and Peter W. Meldrim, of Savannah, Georgia, constitute the Executive Committee of the Conference, of which Judge Staake, of Pennsylvania, is the chairman.

At the same conference, reports were received from the Committees on Commercial Law, Francis B. James, of Ohio, Chairman; Marriage and Divorce, Walter George Smith, of Pennsylvania, Chairman; Insurance, Charles F. Libby, of Maine, Chairman; Purity of Articles of Commerce, William H. Staake, of Pennsylvania, Chairman; and the Torrens System of Registration of Titles to Land, John C. Richburg, of Illinois, Chairman. Copies of these reports will appear in the printed proceedings of the conference, to which reference is made. No action in the way of an endorsement and recommendation of a particular statute, affecting any of these subjects, was taken by the Commissioners.

The Committee on the Torrens System of Registration of Title to Land, referred in approving terms to the work of the Pennsylvania Bar Association on this subject, and quoted very freely from the reports made to that Association by Charles Wetherill, Esq., of the bar of Philadelphia, the chairman of the committee on that subject in the Pennsylvania Bar Association.

Reference was also made to the action of the National Conference of Insurance Commissioners, Attorneys-General and others, which met in Chicago, and subsequently, in St. Paul, Minnesota, but no definitive action was taken by the conference.

A special committee on Vital and Penal Statutes, of which Francis

L. Siddons, Esq., of the Washington, D. C. Bar, was constituted the chairman, was appointed.

By the provisions of the Act of 1905, making an appropriation of two thousand dollars to the Commissioners for the two fiscal years beginning June 1st, one thousand nine hundred and five, the said Commissioners are authorized to pay out of this appropriation as part of their expenses, any sum that may be necessary in their judgment to meet a proportion of the expenses incurred by the National Conference of Commissioners on Uniform State Laws for the Promotion of Uniformity of Legislation in the United States, of which they are members, in connection with any meeting at which they, or any of them, are in attendance.

In pursuance of this provision the sum of five hundred dollars in two installments, has been paid to the Treasurer of the National Conference.

On the recommendation of the Executive Committee of the conference, the legislatures of the several states, and their Commissioners were urged to secure the passage of bills heretofore recommended by the National Conference, which have not been passed, and also to secure from their respective states a reasonable appropriation for the payment of a portion of the expenses of the National Conference.

Your Commissioners would most respectfully ask your Excellency to recommend to the members of the Legislature of the Commonwealth of Pennsylvania, the adoption, at its approaching session, of the act to make uniform the Law of Warehouse Receipts, and the act to make uniform the Law of Sales.

The Negotiable Instruments Law, framed and recommended for adoption by this conference and heretofore made a part of the law of this Commonwealth, has now been adopted by the state legislatures in twenty-eight states, one territory, and by the Congress of the United States for the District of Columbia.

In the judgment of the National Conference, it can probably accomplish more towards securing uniformity of legislation among the states of the Union by taking up one subject after another connected with the commercial interests of the country, such as Negotiable Instruments, Sales, Warehouse Receipts, Bills of Lading, Certificates of Stock, Partnership, etc., concerning which there is an acknowledged necessity for uniformity in legislation throughout the country, and preparing a uniform law on each topic with the aid of experts. A partial codification following the adoption of such uniform laws by the various state legislatures is especially needed in this country, where there are more than fifty courts of last resort, independent of each other and with no other means than this of bringing about a reconciliation of their differing opinions. It is to

be hoped that in the decision of cases arising under our uniform laws, these courts will strive to follow the decisions of the same questions in other states that have adopted the same laws, rather than to follow their own previous decisions, which it is manifest the uniform laws were intended to supersede by the adoption of a principle of the law that all the state courts should follow. In this way, these courts can do their share in our work of harmonizing and making uniform the law on such subjects throughout the country. (From the admirable presentation of this subject by President Eaton, of the National Conference.)

At the time of the meeting of the conference, the rules and regulations for the enforcement of the National Pure Food Law, approved June 30, 1906, had not yet been announced. This law, which will be in force and effect from and after the first day of January, 1907, was favorably commented upon by the President of the Conference in his Annual Address, and will be the subject of a special report to the conference at its next Annual Session. A copy of this act is hereunto appended marked Exhibit "E."

Your Commissioners trust that your Excellency may see fit to recommend to the Legislature of the Commonwealth, a renewal of the appropriation made in 1905 for the payment of the actual outlay of the Commissioners appointed to represent the Commonwealth, and towards the payment of the expenses of the National Conference of Commissioners.

All of which is respectfully submitted,

WILLIAM H. STAAKE,
Chairman.
WALTER GEORGE SMITH,
C. LA RUE MUNSON,
Commissioners.

Philadelphia, December 20, 1906.

EXHIBIT "A."

DRAFT OF AN ACT TO MAKE UNIFORM THE LAW RELATING TO THE SALE OF GOODS.

PART I.

FORMATION OF THE CONTRACT.

Section 1.—[CONTRACTS TO SELL AND SALES.] (1.) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(2.) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

(3.) A contract to sell or a sale may be absolute or conditional.

(4.) There may be a contract to sell or a sale between one part owner and another.

The most fundamental distinction in the law of sales is between a contract to sell in the future and a present sale. This distinction is defined in this section and is observed throughout the draft. The phrase "Contract of Sale" used in the English Act has been discarded.

Section 2.—[CAPACITY—LIABILITY FOR NECESSARIES.] Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery.

This section states the prevailing, though not wholly uniform, doctrine of the existing law. Mechem on Sales, § 122, *et seq.* The section follows *verbatim* Section 2 of the English Act except that the words "the sale and" which precede the last word in the section are omitted as introducing a possible ambiguity.

FORMALITIES OF THE CONTRACT.

Section 3.—[FORM OF CONTRACT OR SALE.] Subject to the provisions of this act and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

This follows the first part of Section 3 of the English Act. That Act contains the following proviso which was omitted as unnecessary:

"Provided that nothing in this section shall affect the law relating to corporations."

Section 4.—[STATUTE OF FRAUDS.] (1.) A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2.) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3.) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.

Sub-section (1) of this section follows Section 4 (1) of the English Act with the exceptions stated below.

The words of the section of the English Act are somewhat altered from those of the seventeenth section of the Statute of Frauds, but the changes are such as to express more accurately the construction previously given by Lord Tenterden's Act and by the courts to the Statute of Frauds. See Chalmers (5th ed.) 16.

In the United States a provision corresponding to the seventeenth section of the Statute of Frauds exists in all the states but Alabama, Arizona, Delaware, Illinois, Kentucky, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and West Virginia.

In the remaining states the language of the statutes is by no means uniform, but the construction given by the courts is generally the same as that which has been given to the English Statute of Frauds, and which is now expressed in the Sale of Goods Act. There are some exceptions, however, to this. In the United States it is generally held that promissory notes, shares of stock, and other choses in action "which are subjects of common sale and barter and which have a visible and palpable form," are within the statute. This result is due in some cases to the express inclusion within state statutes of choses in action, but even where the statutes are similar to the English Statute of Frauds, a broader effect as been given to them. Under the definition of goods in Part VI it is clear that no choses in action would be included (Chalmers, 120), unless choses in action were expressly mentioned. The words "or choses in action" have therefore been inserted in the present draft. Simliar words or the broad term "personal property" are found in the Statutes of Frauds now in force in about twenty of the states. Mechem on Sales, § 287.

The limit of price or value varies considerably in this country, fifty dollars is the commonest limit, but as many important states have no statute corresponding to this section of the Statute of Frauds and as it is universally recognized that a great deal of fraud is caused by the statute, it seemed wise to raise the limit of price considerably. Thereby small sales which are usually oral will not be affected, but large transactions which by prudent business usage should be in writing will be covered. It should be noticed that the English limit, ten pounds, which has been translated into fifty dollars in many American statutes was fixed at a time when the value of a pound was much greater than it is now.

The first half of sub-section (2) is taken from the English Act which has enacted the rule laid down by Lee v. Griffin, 1 B. & S. 272. Though this rule is the most scientifically exact, and has been so recognized by writers (*e g*, Benjamin on Sales, § 103), it has found little support in this country, even in cases decided since Lee v. Griffin. The qualification here added to the English subsection is intended to reproduce the rule laid down by Shaw, C. J., in Mixer v. Howarth, 21 Pick. 205, and by Ames, J., in Goddard v. Binney, 115 Mass. 450. The New York rule is still different, and in other states the line may not always be drawn at exactly the same point. The authorities are collected in Mechem, §§ 304-326, and the conclusion drawn in § 326 seems justified by the cases and jus-

tifies the form of this proposed draft:—"The Massachusetts rule seems likely to be received with favor wherever the courts are not debarred by earlier decisions from adopting it."

Sub-section (3) differs from the corresponding English provision, which enacts the rule first laid down in Kibble v. Gough, 38 L. T. n. s. 204, that any recognition of a pre-existing contract in regard to the goods is an acceptance, though accompanied by no assent, or indeed expressing dissent to the carrying out of the bargain. This rule has not been adopted anywhere in the United States, and the provision here suggested represents the American rule, as well as the early English rule. See Mechem, § 357 *et seq.*

SUBJECT MATTER OF CONTRACT.

Section 5.—[EXISTING AND FUTURE GOODS.] (1.) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this act called "future goods."

(2.) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3.) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

This section follows Section 5 of the English Act except that contract to sell is here as elsewhere substituted for "contract of sale" and "contract for the sale." Also in sub-section (3) "parties purport" is substituted for "seller purports." As the intention of the buyer is as important as that of the seller, the substituted expression is the more accurate.

Section 6.—[UNDIVIDED SHARES.] (1.) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2.) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

These provisions are new, and 6 (2) at least probably does not express the English law. It expresses the doctrine of Kimberly Patchin, 19 N. Y. 330, which is supported by the weight of recent American authority, though there are adverse decisions. See Mechem, § 704, *et seq* It is to be noticed that it is provided only that title may pass under the suggested circumstances. The presumption would in most cases be that it did not pass because not intended to pass until separation. See Section 19.

Section 7.—[DESTRUCTION OF GOODS SOLD.] (1.) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2.) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be sub-

stantially changed in character, the buyer may at his option treat the sale—

(a.) As avoided, or

(b.) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible or to pay the agreed price for the goods in which the property passes if the sale was divisible.

Sub-section (1) corresponds to Section 6 of the English Act. The English section does not seem to cover the contingency of deterioration or partial destruction and sub-section (2) has been added for that purpose. The section is believed to express the existing law.

Section 8.—[DESTRUCTION OF GOODS CONTRACTED TO BE SOLD.] (1.) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2.) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a.) As avoided, or

(b.) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible.

Sub-section (1) corresponds to section 7 of the English Act. Sub-section (2) is added to cover the case of deterioration or partial destruction. The section is believed to express the existing law.

THE PRICE.

Section 9.—[DEFINITION AND ASCERTAINMENT OF PRICE.] (1.) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2.) The price may be made payable in any personal property.

(3.) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this act shall not apply.

(4.) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Sub-sections (1) and (4) are substantially the same as Section 8 of the English Act. Sub-section (2) is changed from the English law which in Section 1 (1) requires a "money consideration." The common definition of sale also requires the price to be in money. This definition is copied from the Roman Law. In that law different rules of law were applicable to contracts of sale and of barter. This is not true in our law. Even the Statute of Frauds, where the word "sale" is used has been held applicable to contracts of barter. Browne,

Stat. Frauds, § 293. As the rules of law applicable to barter are the same as those applicable to sale, it seemed desirable to bring cases of barter within the meaning of sale in this draft. On the other hand, different principles are often applicable where a bargain concerns real estate and such cases are, therefore, expressly excluded by sub-section (3).

Section 10.—[SALE AT A VALUATION.] (1.) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or the buyer, can not or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2.) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by Parts IV and V of this act.

Slightly varied from Section 9 of the English Act.

CONDITIONS AND WARRANTIES.

Section 11.—[EFFECT OF CONDITIONS.] (1.) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the non-performance of the condition as a breach of warranty.

(2.) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

Section 11 of the English Act authorizes not only the waiver of a conditions but the election to treat any condition to be fulfilled by the seller as a breach of warranty. The use of condition as including promise or warranty does not seem happy. Chalmers (5th ed.), p. 174, says, "In conveyancing a distinction was drawn between conditions and covenants, which in contracts has now become obliterated." It is very unfortunate if the distinction should become obliterated, for the legal ideas are distinct and should have distinct names. Doubtless the performance of promises in many cases operates as a condition, but all promises are not conditions, and still more emphatically all conditions are not promises.

Section 12.—[DEFINITION OF EXPRESS WARRANTY.] Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty.

The English Act does not define when language amounts to warranty. There is considerable division of authority on the point. The section as drawn is supported by Stroud v. Pierce, 6 Allen, 413, 416; Kenner v. Harding, 85 Ill., 264, 268; Ormsby v. Budd, 72 Ia. 80; McClintock v. Enrick, 87 Ky. 160; Hawkins v. Pemberton, 51 N. Y. 198; Fairbanks Co. v. Metzger, 118 N. Y. 260; Hobart v. Young, 63 Vt. 363; Herron v. Debbrell, 87 Va. 289.

Many authorities, however, require further that the seller shall have intended to warrant. See Mechem, § 1224, *et seq* But this is believed to be unsound for both theoretical and practical reasons. On theory the fundamental basis for liability on warranty is the justifiable reliance on the seller's assertions.

Whether the buyer was justified in his reliance depends not on the intent of the seller, but on the natural tendency of his acts. As a practical matter, the section as drawn does not seem to set up an unreasonably high standard of morality. The tendency of the courts has been distinctly in the direction of greater strictness against seller's statements. See Mechem, page 1072, note 1.

Section 13.—[IMPLIED WARRANTIES OF TITLE.] In a contract to sell or a sale, unless a contrary intention appears, there is—

(1.) An implied warranty on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.

(2.) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale.

(3.) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4.) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest.

This section is copied from the English Section 12, except (4) which is an addition. There are a few American decisions and more dicta that there is no warranty of title where the vendor is out of possession. But the weight of recent authority is against this distinction. See Mechem, § 1302. (4) represents the English as well as the American law, and it seemed best to make an express provision.

Section 14.—[IMPLIED WARRANTY IN SALE BY DESCRIPTION.] Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

This section is identical in meaning with Section 13 of the English Act and identical in language except for the use of the words "contract to sell" and "sale" instead of the English words "contract for the sale" and "sale;" and the substitution of the word "warranty" for "condition," which is used in the English Act as including both condition proper and promise. The meaning of the word "condition" is restricted in this draft to condition proper. As breach of warranty justifies rejection of the goods, and also an action for damages under this draft, the full meaning of the English provision is retained.

Section 15.—[IMPLIED WARRANTIES OF QUALITY.] Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1.) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2.) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3.) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4.) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5.) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6.) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith.

This section follows Section 14 of the English Act. As originally drafted Subsection (1) was limited to the case where the seller was the grower or manufacturer, in conformity with the probable weight of authority. See Mechem, §§ 1314-1318. The rule in New York is still more restricted, and does not hold even a grower or manufacturer liable if the defect was due to latent defects in the material purchased and there was no negligence. Hoe v. Sanborn, 21 N. Y. 552. See also California Code, § 1769. (See contra Randall v. Newson, 2 Q. B. D. 102; Rodgers v. Niles, 11 Ohio St. 48, 56; Leopold v. Van Kirk, 27 Wis. 152.) The tendency of recent decisions, however, has been strongly in the direction of extending the doctrines of implied warranty, and it was thought best in fixing the law in statutory form to follow exactly the English model.

SALE BY SAMPLE.

Section 16.—[IMPLIED WARRANTIES IN SALE BY SAMPLE.] In the case of a contract to sell or a sale by sample—

(a.) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b.) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 47 (3).

(c.) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

This follows substantially Section 15 of the English Act.

PART II.

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER.

Section 17.—[NO PROPERTY PASSES UNTIL GOODS ARE ASCERTAINED.] Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6.

This section follows Section 16 of the English Act except for the addition of the clause beginning "but," etc. See under section 6 for explanation of the difference between English and American law on the point referred to.

Section 18.—[PROPERTY IN SPECIFIC GOODS PASSES WHEN PARTIES SO INTEND.] (1.) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2.) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case.

Follows Section 17 of the English Act.

Section 19.—[RULES FOR ASCERTAINING INTENTION.] Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1.—Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2.—Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

Rule 3.—(1.) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2.) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a.) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

(b.) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4.—(1.) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2.) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 20. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price

before receiving delivery of the goods, and the goods are marked with the words Collect on Delivery or their equivalents.

Rule 5.—If a contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

This section follows Section 18 of the English Act with some changes. The first rule is altered by omitting from the end the words "and the buyer has notice thereof." The insertion of these words in the English Act changed the English law, which had never required notice (see Chalmers, p. 46), in order to make it conform to the Scotch law. There seems no good reason for postponing the transfer of title to this extent. There is no American authority for it.

The English Rule 3 which is omitted is as follows:

"Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done."

This rule, however, is based on decisions which followed a rule of the Roman Law. In the Roman Law the rule was based on a special reason that never existed in the Common Law. Blackburn on Sales, 175. Moreover, the rule was originally laid down in the English law, as it is in the Civil Law, as an absolute rule not a rule of presumption to ascertain intention, as it has become in modern English law. As a rule of presumption it is artificial and has been discarded in New York and some other states. See Mechem, § 515, *et seq.* It was, therefore, deemed wise to omit it.

Rule 3 (1) is not in the English Act. In that Act, a "sale or return" is included in the provision corresponding to Rule 3 (2) of this draft (Section 18, Rule 4 of English Act), thereby making the same presumption apply to such sales as to sales on trial. The distinction between a sale with a right to return and a sale to take effect on approval has not been taken in the English decisions, though Chalmers notices it in his annotation. 9 Harv. L. Rev. 110, n. 3. The distinction has been taken in this country (Mechem, § 657 *et seq*, § 675 *et seq*), and it seems proper to indicate it in this draft.

Rule 3 (2) is the same as Rule 4 of the English Act, except that the words "on trial or on satisfaction" are substituted for "on sale or return."

In rule 4 (2) the last sentence is not in the English Act. It settles a disputed question in accordance with the weight of authority. See 4 Columbia L. Rev. 541. Mechem, §§ 733, 741.

Rule 5 is not in the English Act, but it represents the existing law.

Section 20.—[RESERVATION OF RIGHT OF POSSESSION OR PROPERTY WHEN GOODS ARE SHIPPED.] (1.) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer.

(2.) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3.) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the

seller thereby reserves a right to the possession of the goods, as against the buyer.

(4.) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is endorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Sub-section (1) follows with some change of expression, Section 19 of the English Act except that for the somewhat loose phrase "right of disposal" is substituted "possession or property." The phrase *jus disponendi* has gained some currency as the expression of the right of a seller who has definitely appropriated goods to a contract but who nevertheless takes a bill of lading to his own order. The truth is he has reserved the property as security. The situation is similar to that in a conditional sale.

The first sentence of sub-section (2) is in the English Act, except that "property in the goods" is substituted for "right of disposal." The remainder of the sub-section is new.

Sub-section (3) is not in the English Act, but is thought to be warranted by the existing law.

Sub-section (4) substantially follows the English Act as far as the words "If, however." The proviso beginning "If, however," is not in the English Act. It expresses, nevertheless, the English law, because of the last factors' act. Cahn v. Packet Co. (1899), 1 Q. B. 643. It undoubtedly is in accordance with mercantile understanding and convenience. The seller has trusted the buyer with the possession of the document of title and should bear the consequences. See Mechem, § 166.

Section 21.—[SALE BY AUCTION.] In the case of a sale by auction—

(1.) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2.) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3.) A right to bid may be reserved expressly by or on behalf of the seller.

(4.) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

This follows Section 58 of the English Act, and is believed to express the existing law.

Section 22.—[RISK OF LOSS.] Unless otherwise agreed, the goods remain at the seller's risk until the property therein is trans-

ferred to the buyer but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a.) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b.) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

The exception (a) is not contained in the English Act. Otherwise the section is in substance the same as Section 20 of the English Act. The new exception represents the weight of authority and seems sound on principle. The principal situation at which it is aimed is where a conditional sale has been made, the goods delivered to the buyer, and very likely in use by him. The title is retained instead of taking a mortgage back as would be done in the case of real estate. The beneficial interest is in the buyer, and the risk should be on him. See 9 Harv. L. Rev. 109; Mechem § 635.

Where goods are sent in compliance with an order, but marked "C. O. D.," even though the effect of this were to withhold the title (as to which, however, see Section 19, Rule 4 (2) the risk would be thrown on the buyer. See Mechem, § 840 note (p. 616).

TRANSFER OF TITLE.

Section 23.—[SALE BY A PERSON NOT THE OWNER.] (1.) Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2.) Nothing in this act, however, shall affect—

(a.) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof,

(b.) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

This follows Section 21 of the English Act, except in (2) (a) "recording acts" has been added.

Section 24.—[SALE BY ONE HAVING A VOIDABLE TITLE.] Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

This follows Section 23 of the English Act. Section 22 of that Act relates to sales in market overt and is omitted here.

Section 25.—[SALE BY SELLER IN POSSESSION OF GOODS ALREADY SOLD.] Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value

for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

This follows Section 25 (1) of the English Act. It is comparatively new to the English law being first enacted in the Factor's Act of 1889. But, so far as purchasers are concerned, it states in effect the principle commonly laid down in this country, that delivery is not necessary between the parties, but is as against third persons. The rights of creditors are dealt with in the next section. Section 25 (2) of the English Act provides that a buyer in possession without title shall have power to transfer title. This is contrary to American law and has been omitted. Mechem, § 599.

Section 26.—[CREDITORS' RIGHTS AGAINST SOLD GOODS IN SELLER'S POSSESSION.] Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

The law in this country as to the effect of retention of possession on the rights of creditors is in such conflict and the different rules are locally so firmly fixed, that it seemed unwise to try to provide a uniform rule. All states, however, agree that if the retention is fraudulent in fact, the sale is void as to creditors. The draft, therefore, so provides, and as to other cases—cases of constructive fraud—adopts the locally prevailing rule.

Section 27.—[DEFINITION OF NEGOTIABLE DOCUMENT OF TITLE.] A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title.

This definition, following as it does the definition of negotiable promises to pay money, represents the mercantile understanding in regard to documents of title.

Section 28.—[NEGOTIATION OF NEGOTIABLE DOCUMENTS BY DELIVERY.] A negotiable document of title may be negotiated by delivery.

(a.) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b.) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee.

Here too both mercantile practice and the analogy of bills and notes are followed.

Section 29.—[NEGOTIATION OF NEGOTIABLE DOCUMENTS BY INDORSEMENT.] A negotiable document of title may be

negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

The note to the preceding section is again applicable.

Section 30.—[NEGOTIABLE DOCUMENTS OF TITLE MARKED "NOT NEGOTIABLE."] If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable," or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this Act. But nothing in this Act contained shall be construed as limiting, or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable" "non-negotiable," or the like.

It is a well-known custom of the railroads to stamp upon bills of lading, even though running to order or assigns, the words "Not Negotiable." The object of carriers in so doing seems to be to limit their own liability, but not to interfere with the transfer of the bills between buyer and seller or with the practice of the banks to advance money on such bills. How far the carrier is justified in attempting to limit its liability by such a device may be questioned, but as this act is concerned, not with the liability of the carrier, but with the rights of the various holders of the bill of lading as against each other, it seemed wise to provide merely that as between those parties the words "Not Negotiable" do not change the legal effect of the document.

Section 31.—[TRANSFER OF NON-NEGOTIABLE DOCUMENTS.] A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable receipt cannot be negotiated and the indorsement of such a receipt gives the transferee no additional right.

The distinction between warehouse receipts and bills of lading negotiable in form and those which are not does not seem to be observed in the English decisions; but it is observed in this country both in the usages of warehousemen and carriers and in the decisions of the courts. See Hallgarten v. Oldham, 135 Mass. 1; Gill v. Frank, 12 Oreg. 507; Forbes v. Boston & Lowell R. R., 133 Mass. 154; Litchfield Bank v. Elliott, 83 Minn. 469.

Section 32.—[WHO MAY NEGOTIATE A DOCUMENT.] A negotiable document of title may be negotiated—

(a.) By the owner thereof, or

(b.) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery.

By this section a negotiable document of title is not given the full negotiability of a bill of exchange inasmuch as neither a thief nor a finder is within the terms of the section. Any person entrusted with a document running to bearer or indorsed in blank, irrespective of the terms of the trust is intended to be given

the power of negotiating. While the true owner may claim protection against the theft or accidental loss, if he has voluntarily given such paper to a servant or agent he should bear the loss in case of a wrongful disposition of the document by the servant or agent, rather than a *bona fid.* purchaser.

Section 33.—[RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN NEGOTIATED.] A person to whom a negotiable document of title has been duly negotiated acquires thereby,

(a.) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

(b.) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him.

This section follows the custom of merchants. It makes the document represent the depositor's right in the goods, so that a purchaser of the document, if he acquires a good title thereto, acquires not simply the rights of his vendor, but whatever property the original depositor had, that being what the document represented. 32 (b) makes the obligation of the warehouseman in regard to the goods negotiable.

Many states already have statutes making warehouse receipts negotiable. Mohun on Warehousemen, 944; and some states have statutes in regard to bills of lading, ibid. 848, but these statutes have generally been so brief and general in terms that they have been variously construed and have to some extent failed of their purpose. See Shaw v. Railroad Co., 101 U. S. 557.

This section and the preceding are of fundamental importance to merchants and bankers. They state familiar law in regard to bills and notes and there is authority for them both in the statutes making warehouse receipts and bills of lading negotiable, and also in common law decisions. Pollard v. Reardon, 65 Fed. Rep. 848 (C. C. A.); Munroe v. Phila. Warehouse Co. 75 Fed. Rep. 545. See also Commercial Bank v. Armsby Co. 120 Ga. 74. But the language at least of other cases would seem to indicate the theory that the form of a document of title, though negotiable, is only evidence of intention and that other evidence is admissible to show intention to transfer or retain title even as against innocent third persons. See The Carlos F. Roses, 177 U. S. 655, 665; Washburn Crosby Co. v. Boston & Albany R. R. Co. 180 Mass. 252, 257; Neimeyer Lumber Co. v. Burlington & Mo. R. Co. 54 Neb. 321.

Section 34.—[RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN TRANSFERRED.] A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

This section states the right of any purchaser of bailed goods. One who purchases, therefore, a non-negotiable document of title would gain nothing from the transfer of the document except evidence.

Section 35.—[TRANSFER OF NEGOTIABLE DOCUMENT WITHOUT INDORSEMENT.] Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

This follows the analogy of bills and notes, Crawford, Neg. Inst. Law, § 79.

Section 36.—[WARRANTIES ON SALE OF DOCUMENT.] A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(a.) That the document is genuine.

(b.) That he has a legal right to negotiate or transfer it.

(c.) That he has knowledge of no fact which would impair the validity or worth of the document, and

(d.) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby.

This section except (d) follows the Negotiable Instruments Law, Crawford, § 115. (d) it is believed, states the existing law.

Section 37.—[INDORSER NOT A GUARANTOR.] The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations.

Mercantile usage in regard to documents of title differs from that in regard to bills and notes in the matter to which this section relates. It states the existing law, even in jurisdictions where statutes have made documents of title negotiable. Shaw v. Railroad Co. 101 U. S. 557; Mida v. Geissmann, 17 Ill. App. 207.

Section 38.—[WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE OR DURESS.] The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake, or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

This section merely elaborates for the sake of clearness certain special cases within the terms of section 32.

Section 39.—[ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE DOCUMENT HAS BEEN ISSUED.] If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is

issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court.

If the mercantile theory of documents of title, such as bills of lading and warehouse receipts, were carried to its logical extent, no attachment of the goods represented by the document or levy upon them could be permitted while the negotiable document was outstanding. For the mercantile theory is founded upon the idea that a negotiable document of title represents the goods and may be safely dealt with on that assumption. For one and the same reason it is not admissible for the bailee to deliver the goods without taking up an outstanding negotiable receipt for them, and for the law to allow attachment or levy upon the goods, regardless of outstanding negotiable documents. For a similar reason the maker of negotiable notes is protected by garnishment: in most states by absolutely disallowing such garnishment and in other states by making any garnishment subject to the rights of even a subsequent purchaser for value before maturity of the paper. Likewise by statute in some states an attachment of stock is postponed to a subsequent purchaser of the stock certificate. Clews v. Friedman, 180 Mass. 55. So in the case of carriers, some protection against garnishment has been given. In most states, if the goods are actually in transit the carrier can not be garnished, 14 Am. & Eng. Encyc. of Law, 810. A transfer of the bill of lading prevails over a subsequent attachment, Mather v. Gordon, 59 At. Rep. 424 (Conn.); Robert C. White Co. v. Chicago & C. R. Co., 87 Mo. App. 330; Union Bank v. Rowan, 23 S. C. 339; and in Peters v. Elliott, 78 Ill. 321, it was held that an attaching creditor of a consignor was postponed to one who bought the bill of lading subsequently.

It was thought best in this draft not to take the extreme position that no attachment, garnishment or levy, could be made on property for which a negotiable document was outstanding, but to cover the essential practical point by making it a condition of the validity of such seizure that the negotiation of the document be enjoined or the document impounded. The following section expressly gives the court full power to aid, by injunction and otherwise, a creditor seeking to get a negotiable document and the property covered thereby.

Section 40.—[CREDITORS' REMEDIES TO REACH NEGOTIABLE DOCUMENTS.] A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process.

As the right of legal garnishment of bailed property is limited by the preceding section, Section 40 gives the creditor such rights as are included under the heads of bills of equitable attachment or in aid of execution.

PART III.

PERFORMANCE OF THE CONTRACT.

Section 41.—[SELLER MUST DELIVER AND BUYER ACCEPT GOODS.] It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale.

This follows Section 26 of the English Act.

Section 42.—[DELIVERY AND PAYMENT ARE CONCURRENT CONDITIONS.] Unless otherwise agreed, delivery of the goods

and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

This follows Section 27 of the English Act.

Section 43.—[PLACE, TIME AND MANNER OF DELIVERY.] (1.) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business, if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2.) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3.) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4.) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

This is the same as Section 29 of the English Act, except that the second half of sub-section (3) has been added. The section is believed to state the existing law.

Section 44.—[DELIVERY OF WRONG QUANTITY.] (1.) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3.) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in

the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4.) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

This follows Section 30 of the English Act, and is in accordance with the weight of authority. See Mechem, § 1157, *et seq.*

Section 45.—[DELIVERY IN INSTALMENTS.] (1.) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2.) Where there is a contract to sell goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

This section is slightly altered from Section 31 of the English Act. The English Act, following prior English decisions, makes repudiation by one party the test of the right of the other to refuse to go on. The section here given makes the materiality of the breach the test. This is in accord with the weight of American authority. Norrington v. Wright, 115 U. S. 188; 14 Harv. L. Rev. 323.

Section 46.—[DELIVERY TO A CARRIER ON BEHALF OF THE BUYER.] (1.) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, rule 5, or unless a contrary intent appears.

(2.) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3.) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

These paragraphs follow with slight changes Section 32 of the English Act. (1) is familiar law. (2) and (3) are probably in accordance with the business usage, but there is little in the way of positive law on the subject. See Chalmers (5th ed.), p. 73.

Section 47.—[RIGHT TO EXAMINE THE GOODS.] (1.) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until

he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2.) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3.) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words Collect on Delivery, or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

Section 47 (1) and (2) follow Section 34 of the English Act, and state the American law also. Mechem, § 1375, *et seq.* Sub-section (3) is new. It states the actual practice of the large express companies and probably states the existing law. Wiltse v. Barnes, 46 Ia., 210.

Section 48.—[WHAT CONSTITUTES ACCEPTANCE.] The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

This follows Section 35 of the English Act, and represents the American law also. Mechem, § 1379, *et seq.*

Section 49.—[ACCEPTANCE DOES NOT BAR ACTION FOR DAMAGES.] In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor.

This section is not contained in the English Act, but Section 11 (1) (a) of that Act seems to authorize the buyer to accept goods and nevertheless hold the seller liable in damages. The latter half of the section in this draft imposes a qualification sanctioned by good business practice and to some extent by law, both in this country and in Europe.

The law in this country is in great conflict. See Mechem, § 1388 *et seq.*

Section 50.—[BUYER IS NOT BOUND TO RETURN GOODS WRONGLY DELIVERED.] Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them.

This follows Section 36 of the English Act. Such American authority as there is, is in accord. Mechem, § 1403.

Section 51.—[BUYER'S LIABILITY FOR FAILING TO ACCEPT DELIVERY.] When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default.

This follows substantially Section 37 of the English Act, except for the addition of breach of the entire contract as an equivalent of repudiation. See note to Section 45.

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

Section 52.—[DEFINITION OF UNPAID SELLER.]. (1.) The seller of goods is deemed to be an unpaid seller within the meaning of this act—

(a.) When the whole of the price has not been paid or tendered.

(b.) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2.) In this part of this act the term "seller" includes an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller.

This follows Section 38 of the English Act, except that in (1) (b) "has been broken" is substituted for "has not been fulfilled" and "the insolvency of the buyer" has been inserted.

Section 53.—[REMEDIES OF AN UNPAID SELLER.] (1.) Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has—

(a.) A lien on the goods or right to retain them for the price while he is in possession of them.

(b.) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them.

(c.) A right of resale as limited by this act.

(d.) A right to rescind the sale as limited by this act.

(2.) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage "in transitu" where the property has passed to buyer.

This follows Section 39 of the English Act, except for the insertion of 1 (d), which is in conformity with the American law and with business usage. Mechem, § 1682.

UNPAID SELLER'S LIEN.

Section 54.—[WHEN RIGHT OF LIEN MAY BE EXERCISED.] (1.) Subject to the provisions of this act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a.) Where the goods have been sold without any stipulation as to credit.

(b.) Where the goods have been sold on credit, but the term of credit has expired.

(c.) Where the buyer becomes insolvent.

(2.) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

This follows Section 41 of the English Act.

Section 55.—[LIEN AFTER PART DELIVERY.] Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

This follows Section 42 of the English Act.

Section 56.—[WHEN LIEN IS LOST.] (1.) The unpaid seller of goods loses his lien thereon—

(a.) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof.

(b.) When the buyer or his agent lawfully obtains possession of the goods.

(c.) By waiver thereof.

(2.) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

This substantially follows Section 43 of the English Act.

STOPPAGE IN TRANSITU.

Section 57.—[SELLER MAY STOP GOODS ON BUYER'S INSOLVENCY.] Subject to the provisions of this act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

This follows Section 44 of the English Act with two exceptions. In the last clause the English Act reads, "and may retain them until payment or tender of the price." But the seller under such circumstances has also the right to resell, and under this draft the right to rescind the sale. In the second line the words "is or" have been inserted, so as to make it clear that the seller's right exists even though the buyer were insolvent at the time of the sale. In Rogers v. Thomas, 20 Conn. 54, it was said that there would be no right of stoppage unless the insolvency arose after the sale; but this case has been uniformly criticised and would probably not be followed even in Connecticut. Mechem, § 1541.

Section 58.—[WHEN GOODS ARE IN TRANSIT.] (1.) Goods are in transit within the meaning of section 57:

(a.) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b.) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2.) Goods are no longer in transit within the meaning of section 57:

(a.) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b.) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent, that he holds the goods on his behalf and continues in possession of them as bailee for the buyer, or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c.) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf.

(3.) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent of the buyer.

(4.) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods.

This follows Section 45 of the English Act, but with considerable changes in wording and arrangement. The section is believed to state the existing law.

Section 59.—[WAYS OF EXERCISING THE RIGHT TO STOP.] (1.) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2.) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such redelivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation.

This follows Section 46 of the English Act, except the final proviso. The carrier should be liable to a *bona fide* transferee of its bill of lading, and unquestionably would be at common law if the transferee took for value before the stoppage. Even though the transferee took after the notice of stoppage he

is protected by Section 62. The carrier therefore ought not to be obliged or allowed to surrender the goods unless the document of title is surrendered.

RESALE BY THE SELLER.

Section 60.—[WHEN AND HOW RESALE MAY BE MADE.] (1.) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2.) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3.) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4.) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5.) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale.

This section differs considerably from Section 48 of the English Act. The wording of that section did not seem wholly adequate.

Section 48 (2) of the English Act seems to provide that the resale, whether rightly made or not, so long as it is made by a seller having a lien gives a good title, and Section 8 of the Factors' Act of 1889, providing that any seller in possession has power to make a valid sale or pledge, squares with this; but the provision seems somewhat drastic for this country. See Mechem, § 1644. The requirements as to delivery and change of possession in this draft would generally protect the purchaser on the resale if he got delivery, and this seems far enough to go.

The point covered by (3) is much disputed. The English law requires notice where the goods are not perishable, and some cases so hold in this country. Others reach a contrary result. See Mechem, § 1633. On the one hand, it seems undesirable to make a resale invalid under all circumstances for lack of notice. The lapse of time or other circumstances might make it highly unjust to allow the buyer later, when perhaps market prices had risen, to make such a claim. On the other hand, it seems desirable that notice should generally be given. The provision suggested will have the effect, it is hoped, of making notice necessary unless the default of the buyer is very clear and long continued. (4) expresses the law. Mechem, § 1637.

RESCISSION BY THE SELLER.

Section 61.—[WHEN AND HOW THE SELLER MAY RESCIND THE SALE.] (1.) An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer

damages for any loss occasioned by the breach of the contract or the sale.

(2.) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted.

This section is not contained in the English Act, and the remedy for which the section provides is not allowed by English law. It is allowed in this country, and seems fully justified by mercantile custom and convenience. Mechem, § 1681, 1682; Burdick, p. 243.

Section 62.—[EFFECT OF SALE OF GOODS SUBJECT TO LIEN OR STOPPAGE IN TRANSITU.] Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu.

This section is based on Section 47 of the English Act. The proviso is, however, made more far reaching than in the English Act in order to cover a case which does not seem to have arisen or to have been considered in England, namely, where a bill of lading is transferred to an innocent purchaser for value after notice to stop has been given. The only case is Newhall v. Central Pac. R. R., 51 Cal. 345, which protects the purchaser. This case has been criticised. See Mechem, § 1567; Burdick, p. 236; Hutchinson on Carriers, § 414. But it seems clearly better to limit the right of stoppage in transitu of a seller who has entrusted the buyer with a perfect apparent title than to deprive the innocent purchaser of the goods.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

REMEDIES OF THE SELLER.

Section 63.—[ACTION FOR THE PRICE.] (1.) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2.) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to

the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3.) Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if the provisions of section 64 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

(1) and the first half of (2) follow the English Act. The addition to (2) beginning "But," etc., is believed to be justified by the weight of American authority.

(3) is not law in England, nor is it in a number of American states. On the other hand, the New York court, in an often quoted passage, allows the remedy to an unpaid vendor generally without any qualification as to the nature of the goods. It is also allowed in the civil law. The rule suggested goes as far as convenience requires, for if the goods can readily be resold, the action for damages affords adequate relief. See Mechem, § 1694.

Section 64.—[ACTION FOR DAMAGES FOR NON-ACCEPTANCE OF THE GOODS.] (1.) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2.) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4.) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

This follows Section 50 of the English Act, except (4), which is added. (4) is not law in England, but it is in this country except in Illinois. See 14 Harv. L. Rev. 422; Mechem, § 1700 *et seq.* The provision does not require the seller to cease performance in every case. There may be cases where the damage caused by stopping performance would be greater than that caused by finishing the necessary work. See Southern Cotton Oil Co. v. Heflin, 99 Fed. Rep. 339. In such a case the seller might complete performance, and recover damages based on completed performance.

Section 65.—[WHEN SELLER MAY RESCIND CONTRACT OR SALE.] Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may

totally rescind the contract or the sale by giving notice of his election so to do to the buyer.

Section 61 allows the seller to rescind the transfer of title in the cases there covered. The rescission of all contractual obligation between the parties—a more extensive right—is covered by this section, which is believed to express the American law.

REMEDIES OF THE BUYER.

Section 66.—[ACTION FOR CONVERTING OR DETAINING GOODS.] Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

This section, which is not contained in the English Act, allows trover, replevin, equitable, or other relief, as the local law may warrant.

Section 67.—[ACTION FOR FAILING TO DELIVER GOODS.] (1.) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

(2.) The measure of damages is the loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

This follows Section 51 of the English Act.

Section 68.—[SPECIFIC PERFORMANCE.] Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just.

This follows, with slight changes in wording, Section 52 of the English Act.

Section 69.—[REMEDIES FOR BREACH OF WARRANTY.] (1.) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a.) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(b.) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c.) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d.) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2.) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3.) Where the goods have been delivered to the buyer, he can not rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4.) Where the buyer is entitled to rescind the sale and elect to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5.) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 53.

(6.) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7.) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

This section differs materially from the corresponding section of the English Act,—Section 53. This draft allows rescission as a remedy for breach of warranty. The English law does not. In defence of the remedy of rescission, see an article by the draftsman in 16 Harv. L. Rev. 465. This article led to a discussion with Professor Burdick, who supported the English doctrine. Sec. 4 Columbia L. Rev. 1, 195, 265; 17 Harv. L. Rev. 500. Further, the English Act, following Mondel v. Steel, 8 M. & W. 858, allows the buyer to recoup his damages in an action for the price and thereafter to bring an action for damages. This seems erroneous, see Watkins v. American Bank, 134 Fed. Rep. 36 (C. C. A.), and has been changed in this draft.

Section 70.—[INTEREST AND SPECIAL DAMAGES.] Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

This follows Section 54 of the English Act.

PART VI.

INTERPRETATION.

Section 71.—[VARIATION OF IMPLIED OBLIGATIONS.] Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale.

This follows Section 55 of the English Act.

Section 72.—[RIGHTS MAY BE ENFORCED BY ACTION.] Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action.

This follows Section 57 of the English Act.

Section 73.—[RULE FOR CASES NOT PROVIDED FOR BY THIS ACT.] In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods.

This provision seems obviously desirable.

Section 74.—[INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.] This act shall be so interpreted and construed, if possible, as to effectuate its general purpose to make uniform the law of those states which enact it.

This section introduces a new principle of statutory interpretation. It is, however, obviously a proper principle in regard to statutes, the primary object of which is to make the law uniform.

Section 75.—[PROVISIONS NOT APPLICABLE TO MORTGAGES.] The provisions of this act relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security.

This follows Section 60 (2) of the English Act, except for the words "unless so stated." Though the draft does not generally purport to deal with the peculiar rules of mortgage law, there are a few places in which mortgage relations or similar ones are covered, *e. g.*, Sections 20 (2), 22 (a).

Section 76.—[DEFINITIONS.] (1.) In this act, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, set-off and suit in equity.

"Buyer" means a person who buys or agrees to buy goods or any legal successor in interest of such person.

"Defendant" includes a plaintiff against whom a right of set-off or counterclaim is asserted.

"Delivery" means voluntary transfer of possession from one person to another.

"Divisible contract to sell or sale" means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

"Document of title to goods" includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by endorsement or by delivery, goods represented by such document.

"Fault" means wrongful act or default.

"Fungible goods" mean goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

"Future goods" mean goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Order" in sections of this act relating to documents of title means an order by indorsement on the document.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchaser" includes mortgagee and pledgee.

"Purchases" include taking as a mortgagee or as a pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in interest of such person.

"Specific goods" mean goods identified and agreed upon at the time a contract to sell or a sale is made.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of title are taken either in satisfaction thereof or as security therefor.

(2.) A thing is done "in good faith" within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3.) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(4.) Goods are in a "deliverable state" within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

The only one of these definitions requiring comment is that of "value" which follows the weight of authority at common law and the provision of the Negotiable Instrument Law as intended by its framers. In regard to property other than negotiable instruments the law of many states does not regard an antecedent debt as value; but it seems desirable to have a single rule for what

constitutes valuable consideration, and mercantile convenience supports the one adopted. It is supported, moreover, by the law of England and a few of our states. See Williston's Cases on Sales, (2d ed.) 369, n.

Section 77.—[INCONSISTENT LEGISLATION REPEALED.] All acts or parts of acts inconsistent with this act are hereby repealed.

Section 78.—[TIME WHEN THE ACT TAKES EFFECT.] This act shall take effect on the day of one thousand nine hundred and

Section 79.—[NAME OF ACT.] This act may be cited as the Sales Act.

EXHIBIT "B."

DRAFT OF AN ACT TO MAKE UNIFORM THE LAW OF WAREHOUSE RECEIPTS.

Be it enacted, etc., as follows:

PART I.

THE ISSUE OF WAREHOUSE RECEIPTS.

Section 1.—[PERSONS WHO MAY ISSUE RECEIPTS.] Warehouse receipts may be issued by any warehouseman.

This should be read in connection with the definition of warehouseman in section 58. On account of varying local conditions and laws it seemed impracticable in an act intended to be passed in many states to fix limits as to who might carry on the business of warehousing.

Section 2.—[FORM OF RECEIPTS. ESSENTIAL TERMS.] Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a.) The location of the warehouse where the goods are stored,

(b.) The date of issue of the receipt,

(c.) The consecutive number of the receipt,

(d.) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,

(e.) The rate of storage charges,

(f.) A description of the goods or of the packages containing them,

(g.) The signature of the warehouseman, which may be made by his authorized agent,

(h.) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i.) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

This section is in accordance with business custom except (h) and (i). As some abuses have arisen from warehousemen issuing receipts on their own goods, it seemed wise that when they issued negotiable receipts in this way, the document should carry notice of the fact on its face. See Section 53 in this connection. It is obvious also that negotiable receipts should show on their face what charges are claimed against the goods. See further as to this, Section 30.

Though it is desired that all warehouse receipts shall conform to the rules here laid down, the essential thing is that negotiable receipts shall do so, and as to them only is a sanction imposed for failing to insert the statutory terms.

Section 3.—[FORM OF RECEIPTS. WHAT TERMS MAY BE INSERTED.] A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a.) Be contrary to the provisions of this act.

(b.) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Public policy demands that in the case of warehousemen, as well as in the case of carriers, where the question has more often arisen, a contract to be freed from the consequences of negligence should not be allowed. See Schouler on Bailments (1905) §§ 36, 362 *et seq.*

Section 4.—[DEFINITION OF NON-NEGOTIABLE RECEIPT.] A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

See note to the following section.

Section 5.—[DEFINITION OF NEGOTIABLE RECEIPT.] A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

This draft makes a fundamental distinction throughout between negotiable and non-negotiable receipts. The former is the negotiable representative of the goods, the latter is merely evidence of an ordinary contract of bailment. This distinction accords with mercantile usage, and though in many places the law is not clear, the prevailing legal understanding agrees with the mercantile usage. Hallgarten v. Oldham, 135 Mass. 1.

Section 6.—[DUPLICATE RECEIPTS MUST BE SO MARKED.] When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

It is the practice of most if not all careful warehousemen not to issue duplicate negotiable receipts at all, and such issues are to be discouraged, but following a large number of statutes already existing this act instead of forbidding the practice altogether safeguards it by requiring the receipt to be plainly marked.

Section 7.—[FAILURE TO MARK "NOT NEGOTIABLE."] A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

This section like the preceding is aimed at obvious frauds. Both follow much existing legislation. See passages in Mohun on Warehousemen indexed at pp. 943, 944.

PART II.

OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS.

Section 8.—[OBLIGATION OF WAREHOUSEMAN TO DELIVER.] A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a.) An offer to satisfy the warehouseman's lien,

(b.) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and

(c.) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

See the definition of "holder" in Section 58. The requirement of signing an aeknowledgment that the goods have been received is in accordance with universal business usage, though it is doubtful if the usage has been supported by law. As the usage is reasonable it is adopted as the rule of this act. The burden imposed on the warehouseman in the last paragraph agrees with existing law. Burnell v. N. Y. C. R. R. Co. 45 N. Y. 184.

Section 9.—[JUSTIFICATION OF WAREHOUSEMAN IN DELIVERING.] A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a.) The person lawfully entitled to the possession of the goods, or his agent,

(b.) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c.) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

This section gives the warehouseman a justification in some cases where he would not under the preceding section be bound to deliver, *e. g.* If a thief presented a negotiable receipt properly indorsed, the warehouseman would be protected if he delivered the goods innocently.

Section 10.—[WAREHOUSEMAN'S LIABILITY FOR MISDELIVERY.] Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(a.) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b.) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

This is believed to represent the law. See Schouler (1905) §§ 44, 45; Velsian v. Lewis, 15 Oreg. 539.

Section 11.—[NEGOTIABLE RECEIPTS MUST BE CANCELLED WHEN GOODS DELIVERED.] Except as provided in Section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

It is an obvious requirement of the mercantile use of negotiable receipts that the goods shall remain in the warehouse as long as the receipt is outstanding, and statutes similar in effect to this section are in force in some states. Mohun, 2, 24, 355, 382, 538, 593.

The section does not apply to non-negotiable receipts, because usage and mercantile necessity frequently require delivery in such cases without surrender of the receipt.

Section 12.—[NEGOTIABLE RECEIPTS MUST BE CANCELLED OR MARKED WHEN PART OF GOODS DELIVERED.] Except as provided in Section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

This section follows as to partial deliveries the rule of the preceding.

Section 13.—[ALTERED RECEIPTS.] The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a.) Immaterial,

(b.) Authorized, or

(c.) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the

warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

This section adopts the prevailing rule of the common law. Even fraudulent alteration cannot divest the title of the owner of stored goods and the warehouseman is therefore liable to redeliver them to the owner.

Section 14.—[LOST OR DESTROYED RECEIPTS.] Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

As it is for obvious reasons forbidden and indeed made a criminal offence (Section 52) to issue an additional negotiable receipt, it is evident that great care must be used in permitting such an issue or what is the same thing the redelivery of the goods without the surrender of the original receipt. It is not enough that the parties agree that the goods shall be given up or a new receipt issued. It is essential that a court shall pass upon the question and make sure that the original is lost or destroyed and that a proper indemnity is taken, for the rights of possible innocent purchasers of the original receipt are involved.

Section 15.—[EFFECT OF DUPLICATE RECEIPTS.] A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability.

See note to Section 6.

Section 16.—[WAREHOUSEMAN CAN NOT SET UP TITLE IN HIMSELF.] No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

This states the common law. 3 Am. & Eng. Encyc. of Law, 759.

Section 17.—[INTERPLEADER OF ADVERSE CLAIMANTS.] If more than one person claim the title or possession of the goods, the warehouseman may, either as a defence to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

The case of Crawshay v. Thornton, 2 Myl & C. 1 unfortunately held that interpleader was not a proper remedy in such a case. It is, however, the only adequate remedy and is probably generally allowed in this country. 3 Am. & Eng. Encyc. of Law, 762.

Section 18.—[WAREHOUSEMAN HAS REASONABLE TIME TO DETERMINE VALIDITY OF CLAIMS.] If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refnsing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

It seems obviously proper that the warehouseman should be protected for such brief period as may be necessary to enable him to determine the rights of the claimants.

Section 19.—[ADVERSE TITLE IS NO DEFENCE, EXCEPT AS ABOVE PROVIDED.] Except as provided in the two preceding sections and in Sections 9 and 36, no right or title of a third person shall be a defence to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Except as qualified by the preceding sections, the common law doctrine is here stated that a bailee can not set up the title of a third person as an excuse for failure to deliver goods. See 3 Am. & Eng. Encyc. 758.

Section 20.—[LIABILITY FOR NON-EXISTENCE OR MISDESCRIPTION OF GOODS.] A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

This section imposes on the warehouseman a stricter rule than that generally in force in this country in that it makes a warehouseman liable for an innocent misdescription of the goods. See Hale v. Milwaukee Dock Co. 23 Wis. 276; but as the warehouseman can readily protect himself by inserting in the receipt only what he knows, namely the marks on the goods or the statements of the depositor regarding them, it seems best to make the warehouseman responsible for what he asserts.

Section 21.—[LIABILITY FOR CARE OF GOODS.] A warehouseman shall be liable for any loss or injury to the goods caused

by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

This states the common law. 3 Am. & Eng. Encyc. 750.

Section 22.—[GOODS MUST BE KEPT SEPARATE.] Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

As to most merchandise, of course, the warehouseman's duty is to keep the goods of each depositor separate. The following section provides for the exception to the rule.

Section 23.—[FUNGIBLE GOODS MAY BE COMMINGLED, IF WAREHOUSEMAN AUTHORIZED.] If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

An exceptional rule prevails in this country by custom as to grain and similar merchandise. See definition of fungible in Section 58.

Section 24.—[LIABILITY OF WAREHOUSEMAN TO DEPOSITORS OF COMMINGLED GOODS.] The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

This section and the two preceding sections state the general American law.

Section 25.—[ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE RECEIPT HAS BEEN ISSUED.] If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

If the mercantile theory of documents of title, such as bills of lading and warehouse receipts, were carried to its logical extent, no attachment of the goods represented by the document or levy upon them could be permitted while the negotiable document was outstanding. For the mercantile theory proceeds upon the assumption that a negotiable document of title represents the goods and may be safely dealt with on that assumption. For one and the same reason it is not admissible for the bailee to deliver the goods without taking up an out-standing negotiable receipt for them, and for the law to allow attachment or levy upon the goods, regardless of outstanding negotiable documents. For a similar reason the maker of negotiable notes is protected by garnishment; in most

states by absolutely disallowing such garnishment and in other states by making any garnishment subject to the rights of even a subsequent purchaser for value before maturity of the paper. Likewise by statute in some states an attachment of stock is postponed to a subsequent purchaser of the stock certificate. Clews v. Friedman, 180 Mass. 556. So in the case of carriers, some protection against garnishment has been given. In most states, if the goods are actually in transit the carrier can not be garnished, 14 Am. & Eng. Encyc. of Law, 810. A transfer of the bill of lading prevails over a subsequent attachment. Mather v. Gordon, 59 At. Rep. 424 (Conn.); Robert C. White Co. v. Chicago & C. R. Co. 87 Mo. App. 330; Union Bank v. Rowan, 23 S. C. 339; and in Peters v. Elliott, 78 Ill. 321, it was held, that an attaching creditor of a consignor was postponed to one who bought the bill of lading subsequently.

It was thought best in this draft not to take the extreme position that no attachment, garnishment or levy could be made on property for which a negotiable receipt was outstanding, but to cover the essential practical point by making it a condition of the validity of such seizure that the negotiation of the receipt be enjoined or the document impounded. The following section expressly gives the court full power to aid, by injunction and otherwise, a creditor seeking to get at a negotiable receipt and the property covered thereby.

Section 26.—[CREDITORS' REMEDIES TO REACH NEGOTIABLE RECEIPTS.] A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

This section is to enable the court to give the fullest relief possible in making the negotiable receipt available to the creditor since the goods can not otherwise be taken from the warehouseman's possession.

Section 27.—[WHAT CLAIMS ARE INCLUDED IN THE WAREHOUSEMAN'S LIEN.] Subject to the provisions of Section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

This extends the common law, but has the precedent of other statutes. See Mohun, 37, 86, 124, 203, 215, 352, 546, 553, 706, 772, 801, 833.

Section 28.—[AGAINST WHAT PROPERTY THE LIEN MAY BE ENFORCED.] Subject to the provisions of Section 30, a warehouseman's lien may be enforced—

(a.) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b.) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

Section 29.—[HOW THE LIEN MAY BE LOST.] A warehouseman loses his lien upon goods—

(a.) By surrendering possession thereof, or

(b.) By refnsing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

This section merely states the rule of the common law.

Section 30.—[NEGOTIABLE RECEIPT MUST STATE CHARGES FOR WHICH LIEN IS CLAIMED.] If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods snbsequent to the date of the receipt, nnless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enmmerated so far as they are within the terms of Section 27, although the amount of the charges so enumerated is not stated in the receipt.

This section is obviously requisite for the credit of negotiable receipts. See note to Section 2.

Section 31.—[WAREHOUSEMAN NEED NOT DELIVER UNTIL LIEN IS SATISFIED.] A warehouseman having a lien valid against the person demanding the goods may refnse to deliver the goods to him until the lien is satisfied.

This is the rule of the common law.

Section 32.—[WAREHOUSEMAN'S LIEN DOES NOT PRECLUDE OTHER REMEDIES.] Whether a warehouseman has or has not a lien npon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

This section also only restates the common law.

Section 33.—[SATISFACTION OF LIEN BY SALE.] A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehonseman shall give a written notice to the person on whose accomnt the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a.) An itemized statement of the warehonseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b.) A brief description of the goods against which the lien exists,

(c.) A demand that the amonnt of the claim as stated in the notice, and of such further claim as shall accrne, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the dne course of post, if the notice is sent by mail, and

(d.) A statement that nnless the claim is paid within the time specified the goods will be advertised for sale and sold by anction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

This section is copied with slight changes from the New York law, Mohun, 553.

Section 34.—[PERISHABLE AND HAZARDOUS GOODS.] If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

This section is copied with slight changes from Massachusetts Rev. Laws, c. 69, sec. 9.

Section 35.—[OTHER METHODS OF ENFORCING LIENS.] The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien

against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

It did not seem wise in view of the wide difference in procedure between some of the states to make the method of enforcing a lien provided by Section 33 exclusive.

Section 36.—[EFFECT OF SALE.] After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable

This section necessarily qualifies the right of a purchaser of a negotiable receipt. Such a purchaser may ordinarily assume that if the document was issued to the owner of the goods and has been duly transferred to the purchaser, the latter will get a good title, but this assumption must be qualified by the chance referred to in this section. The age of the receipt will, however, ordinarily give warning. Moreover the purchaser of the receipt will be entitled to the balance of the proceeds of the sale, after satisfying the warehouseman.

PART III.

NEGOTIATION AND TRANSFER OF RECEIPTS.

Section 37.—[NEGOTIATION OF NEGOTIABLE RECEIPTS BY DELIVERY.] A negotiable receipt may be negotiated by delivery—

(a.) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b.) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

It is not usual for warehouse receipts to be made to bearer but as it seems clear that if a receipt were made in that form it should be negotiable by delivery it seemed wise to make provision for the case. The rule as to restrictive indorsement is also aimed rather to cover a possible contingency than a usual practice.

Section 38.—[NEGOTIATION OF NEGOTIABLE RECEIPTS BY INDORSEMENT.] A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such

person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

This section applies the law of bills and notes, as it is in fact applied by mercantile custom, to warehouse receipts.

Section 39.—[TRANSFER OF RECEIPTS.] A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

The three perceding sections follow the terminology of the Negotiable Instruments Law in distinguishing "negotiation" and "transfer." Section 39 applies not only to the transfer of non-negotiable receipts, but also to the transfer without a necessary indorsement of negotiable receipts.

Section 40.—[WHO MAY NEGOTIATE A RECEIPT.] A negotiable receipt may be negotiated—

(a.) By the owner thereof, or

(b.) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

This section and the next are of fundamental importance to the mercantile community. They state familiar law in regard to bills and notes and there is authority for them in the statutes making warehouse receipts and bills of lading negotiable and in well recognized mercantile custom. It will be noticed that one who takes by trespass or a finder is not included within the description of those who may negotiate. To this extent the warehouse receipt is not made the equal of the bill of exchange in negotiability.

Section 41.—[RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN NEGOTIATED.] A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a.) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b.) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

This section follows the mercantile theory of making the negotiable receipt represent not simply the title the person negotiating it had, but also whatever property the depositor had, that being what the receipt represented. Many states already have statutes making warehouse receipts negotiable. Mohun, 944; but these statutes have been so brief that they have been variously construed and have to some extent failed of their purpose. See Shaw v. Railroad Co. 101 U. S. 557; Hurt's Case, 99 Ala. 140; Bank v. Lee, 99 Ala. 496.

Section 42.—[RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN TRANSFERRED.] A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

So far as a non-negotiable receipt is concerned this states the rights at common law of any purchaser of bailed goods. Therefore the purchaser gets nothing by the warehouse receipt except evidence. In the case of a negotiable receipt the purchaser has the further right given by the next section.

Section 43.—[TRANSFER OF NEGOTIABLE RECEIPT WITHOUT INDORSEMENT.] Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

This follows the analogy of bills and notes. Crawford, Negot. Inst. Law, § 79.

Section 44.—[WARRANTIES ON SALE OF RECEIPT.] A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a.) That the receipt is genuine,

(b.) That he has a legal right to negotiate or transfer it,

(c.) That he has knowledge of no fact which would impair the validity or worth of the receipt, and

(d.) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

This section except (d) follows the Negotiable Instruments Law. Crawford, § 115. (d) it is believed states the existing law.

Section 45.—[INDORSER NOT A GUARANTOR.] The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

Mercantile usage in regard to warehouse receipts differs from that in regard to bills and notes in the matter to which this section relates. It states the existing law even where statutes have made warehouse receipts and bills of lading negotiable. Shaw v. Railroad Co. 101 U. S. 557; Mida v. Geissmann, 17 Ill. App. 207.

Section 46.—[NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.] A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party

to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

There are several English decisions to the effect that the holder of a bill of exchange having a forged bill of lading as security is not liable to refund payment of the draft if he receives payment from the drawee. To the same effect are Hoffman v. Bank, 12 Wall. 181; Goetz v. Bank, 119 U. S. 551, and see Daniel on Neg. Inst. §§ 174, 175.

In Landa v. Lattin, 19 Tex. Civ. App. 246, however, without referring to these authorities, the court went to the extreme length of holding that the holder of a bill of lading taken for security on the discount of a draft succeeded to all the liabilities of his transferor, the seller of the goods, and was to be regarded as warranting the quality of the goods to the same extent as the seller. This decision, though opposed to both authority and reason, was soon followed in Finch v. Gregg, 126 N. C. 176, and Searles v. Smith Grain Co., 80 Miss. 688. A contrary decision was, however, rendered in Tolerton-Stetson Co. v. Anglo-California Bank, 112 Ia. 706, and more recently Landa v. Lattin has been overruled in its own state, Blaidsell Co. v. Citizens' Nat. Bank, 96 Tex. 626, but has nevertheless been subsequently followed in Alabama. Though these decisions all relate to bills of lading the same question may arise as to warehouse receipts and it seemed wise to provide for it.

Section 47.—[WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE, OR DURESS.] The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress

This section merely elaborates for the sake of clearness certain cases within the terms of Section 40.

Section 48.—[SUBSEQUENT NEGOTIATION.] Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

This is copied from Section 25 (1) of the English Sale of Goods Act, where it applies to all sales of goods. It is of especial importance in the case of negotiable documents of title.

Section 49.—[NEGOTIATION DEFEATS VENDOR'S LIEN.] Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the

warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation

This perhaps goes beyond the existing law. Mechem on Sales, § 1507. See, however, Newhall v. Central Pac. R. R., 51 Cal. 345. The protection of dealings in negotiable receipts clearly requires that a vendor, who has by giving up possession of goods or warehouse receipts allowed negotiable receipts to be outstanding, should not be permitted to defeat one who buys such receipts.

PART IV.

CRIMINAL OFFENSES.

Section 50.—[ISSUE OF RECEIPT FOR GOODS NOT RECEIVED.] A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

To insure the fundamental basis on which the value of negotiable receipts must rest it seemed necessary to punish criminally any misrepresentation or fraud in regard to the existence of the goods behind the receipt. Other obvious frauds are aimed at by the following five sections.

Section 51.—[ISSUE OF RECEIPT CONTAINING FALSE STATEMENT.] A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

Section 52.—[ISSUE OF DUPLICATE RECEIPTS NOT SO MARKED.] A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in Section 14, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

See note to Section 50.

Section 53.—[ISSUE FOR WAREHOUSEMAN'S GOODS OF RECEIPTS WHICH DO NOT STATE THAT FACT.] Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing

this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

Section 54.—[DELIVERY OF GOODS WITHOUT OBTAINING NEGOTIABLE RECEIPT.] A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in Sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

Section 55.—[NEGOTIATION OF RECEIPT FOR MORTGAGED GOODS.] Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See not to Section 50.

PART V.

INTERPRETATION.

Section 56.—[WHEN RULES OF COMMON LAW STILL APPLICABLE.] In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

A similar provision is commonly inserted when an attempt is made to reduce to statute form a topic of the law, as in the Negotiable Instruments Law, or the Sale of Goods Act.

Section 57.—[INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

This section introduces a new and necessary principle of construction. It would be unfortunate for courts of each state to follow the general rule of con-

struing the law with reference to previously existing rules in that state—possibly rules peculiar to that state. The courts should in view of this section consider not primarily the law previously existing in one state but in the states generally.

Section 58.—[DEFINITIONS.] (1.) In this act, unless the context or subject matter otherwise requires—

"Action" includes counter claim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" mean goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" mean chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2.) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

The only one of these definitions requiring comment is that of "value," which follows the Negotiable Instruments Law and applies the rule generally prevailing in regard to bills and notes to warehouse receipts.

Section 59.—[ACT DOES NOT APPLY TO EXISTING RECEIPTS.] The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

Section 60.—[INCONSISTENT LEGISLATION REPEALED.] All acts or parts of acts inconsistent with this act are hereby repealed.

Section 61.—[TIME WHEN THE ACT TAKES EFFECT.] This act shall take effect on the ———— day of ————, one thousand nine hundred and

Section 62.—[NAME OF ACT.] This act may be cited as the Warehouse Receipts Act.

EXHIBIT "C."

DRAFT OF AN ACT TO MAKE UNIFORM THE LAW OF BILLS OF LADING.

Be it enacted, etc., as follows:

PART I.

THE ISSUE OF BILLS OF LADING.

Section 1.—[PERSONS WHO MAY ISSUE BILLS.] Bills of lading may be issued by any common carrier.

Section 2.—[FORM OF BILLS. ESSENTIAL TERMS.] A bill need not be in any particular form, but every bill must embody within its written or printed terms—

(a.) The date of its issue,

(b.) The name of the person from whom the goods have been received,

(c.) The place where the goods have been received,

(d.) The place to which the goods are to be transported,

(e.) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,

(f.) A description of the goods or of the packages containing them, and

(g.) The signature of the carrier, which may be made by his authorized agent.

A carrier shall be liable to the holder of a negotiable bill for all damage caused by the omission therefrom of any of the provisions herein required.

Section 3.—[FORM OF BILLS. WHAT TERMS MAY BE INSERTED.] A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a.) Be contrary to public policy or to the provisions of this act.

(b.) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Much litigation has arisen over the point involved in 3 b. The provision as drawn is in accordance with the weight of authority (6 Cyc. of Law, 393) and is similar to the corresponding section of the Warehouse Receipts Law.

Section 4.—[DEFINITION OF NON-NEGOTIABLE BILL.] A bill in which it is stated that the goods received will be delivered to the consignor, or to any other specified person, is a non-negotiable bill.

Section 5.—[DEFINITION OF NEGOTIABLE BILL.] A bill in which it is stated that the goods received will be delivered—

(a.) To the bearer,
(b.) To the consignor or his order,
(c.) To any other specified person or his order, or
(d.) To the order of a specified person,
is a negotiable bill.

No provision shall be inserted in a negotiable bill that it is non-negotiable. Such provision, if inserted, shall be void.

Section 6.—[NEGOTIABLE BILLS MUST NOT BE ISSUED IN SETS.] Negotiable bills shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

The issue of bills of lading in parts has been often condemned. It is a direct invitation to fraud in the case of negotiable bills, for one part is as much an original as another. Moreover, it is impossible to guard against the fraud, for it has been held that one who has contracted to buy goods and pay the price on transfer of the bill of lading must pay on having one of a set tendered him. He cannot demand all (Sanders v. McLean, 11 Q. B. D. 327), though by so doing alone can he be protected, for the carrier may deliver without liability to the first holder of a part who presents it. Glynn v. Dock Co., 7 App. Cas. 591.

Section 7.—[DUPLICATE BILLS MUST BE SO MARKED.] When more than one negotiable bill is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such bill, except the one first issued. A carrier shall be liable for all damage caused by his failure so to do to any one who purchased the bill for value supposing it to be an original, even though the purchase be after the delivery of the goods, by the carrier to the holder of the original bill.

The use of duplicate bills is common, and it is obvious that they should be so marked to avoid fraud or mistake. See Midland Bank v. Mo. Pac. Ry., 132 Mo. 492.

Section 8.—[FAILURE TO MARK "NOT NEGOTIABLE."] A non-negotiable bill shall have plainly placed upon its face by the carrier issuing it "non-negotiable" or "not negotiable." In case of the carrier's failure so to do, a holder of the bill, who purchased it for value supposing it to be negotiable, may, at his option, treat the same as imposing upon the carrier the same liabilities he would have incurred had it been negotiable.

This section shall not apply, however, to memoranda or written acknowledgments of an informal character.

A New York statute requires the carrier to require the surrender of all bills except those marked "not negotiable." See Colgate v. Penna. Co., 102 N. Y. 120.

Section 9.—[INSERTION OF NAME OF PERSON TO BE NOTIFIED.] The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

This section is adopted with slight changes in wording from House Bill 15,846 of the 1st session of the 59th Congress. The practice is common for a shipper of goods to take a bill to his own order that he may obtain the discount of a draft for the price, inserting also in the bill a request that the carrier notify the prospective buyer of the arrival of the goods, so that the latter may

promptly pay the price, get the bill of lading, and remove the goods. Banks sometimes fear to discount a draft for the consignor when such a provision is inserted, questioning whether the prospective purchaser of the goods may not have a better right than one who buys the bill of lading either outright or as security. In fact a reasonable man, when such a bill is offered him, would naturally suppose that the person to be notified had at most a contract right to have the goods on payment of the price. As such a right would give no property right, legal or equitable, the purchaser of the bill of lading should take the goods free from liability. As it is important to remove any doubt, however, the section is drawn as above.

Section 10.—[OBLIGATION OF CARRIER TO ISSUE NEGOTIABLE BILLS.] A carrier shall issue a bill for all goods received for transportation, and such bill shall, if so requested by the consignor, be a negotiable bill. The carrier shall not, directly or indirectly, make a greater charge for the transportation of goods for which a negotiable bill is issued, as a condition of issuing such bill, than the lowest rate for the transportation of like goods in like quantities when a negotiable bill is not requested or issued.

This section is substantially identical with Section 8 of House Bill 15,846.

Section 11.—[ACCEPTANCE OF BILL INDICATES ASSENT TO ITS TERMS.] A consignor who receives a bill and makes no objection to its terms or conditions at the time he receives it shall not thereafter be allowed to deny that he assented to such terms and conditions, so far as they were not contrary to law or public policy.

This section deals with a question upon which there has been much litigation, and expresses the weight of authority, though there are many contrary decisions.

PART II.

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING.

Section 12.—[OBLIGATION OF CARRIER TO DELIVER.] A carrier, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a bill for the goods or by the consignee of a bill for the goods, if such demand is accompanied with—

(a.) An offer to satisfy the carrier's lien upon the goods,

(b.) An offer to surrender the bill properly indorsed which was issued by the carrier for the goods, if the bill was negotiable, and

(c.) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the holder or owner so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal.

See the definition of "holder" in Section 53.

Section 13.—[JUSTIFICATION OF CARRIER IN DELIVERING.] A carrier is justified in delivering the goods, subject to the provisions of the three following sections, to one who is either—

(a.) The person lawfully entitled to the possession of the goods, or his agent,

(b.) The consignee of a non-negotiable bill for the goods, or his agent,

(c.) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the consignee or by his mediate or immediate indorsee.

Section 14.—[CARRIER'S LIABILITY FOR MIS-DELIVERY.] Where a carrier delivers the goods to one who is not in fact lawfully entitled to the possession of them, the carrier shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by the preceding section; and, even though he delivered the goods as therein authorized, he shall be so liable if prior to such delivery he had either—

(a.) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b.) Had actual knowledge that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

This is believed to represent the law both as to warehousemen (see Schouler [1905], §§ 44, 45; Velsian v. Lewis, 15 Oreg. 530) and carriers (Southern Express Co. v. Dickson, 94 U. S. 549; 6 Cyc. 468 *et seq*).

Section 15.—[NEGOTIABLE BILLS MUST BE CANCELLED WHEN GOODS DELIVERED.] Except as provided in Section 27, where a carrier delivers goods for which he had issued a negotiable bill, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, he shall be liable, to any one who for value and in good faith purchases such bill, for failure to deliver the goods to him, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier.

It is an obvious requirement of the mercantile use of negotiable bills of lading that the goods shall remain in the hands of the carrier as long as the bill is outstanding, and statutes similar in effect to this section are in force in some states. See also, as to warehousemen, Mohun, 2, 24, 355, 382, 538, 593.

The section does not apply to non-negotiable bills, because usage and mercantile necessity frequently require delivery in such cases without surrender of the receipt. See Forbes v. Boston & Lowell R. R., 133 Mass. 154; Litchfield Bank v. Elliott, 83 Minn. 469.

Section 16.—[NEGOTIABLE BILLS MUST BE CANCELLED OR MARKED WHEN PARTS OF GOODS DELIVERED.] Except as provided in Section 27, where a carrier delivers part of the goods for which he had issued a negotiable bill and fails either—

(a.) To take up and cancel such bill, or

(b.) To place plainly upon it a statement that a portion of the goods has been delivered, with a brief description either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession,

He shall be liable, to any one who for value and in good faith purchases such bill, for failure to deliver all the goods specified in the

bill, whether such purchaser acquired title to the bill before or after the delivery of any portion of the goods by the carrier.

This follows in regard to partial deliveries the rule of Section 15.

Section 17.—[ALTERED BILLS.] Material and fraudulent alteration of a bill shall not excuse a carrier from liability to transport and deliver, according to the terms of the bill as originally issued, the goods for which it was issued, but shall excuse him from any further liability to the person who made the alteration and to any person who purchased the bill or the goods with notice of the alteration.

A holder of a materially altered negotiable bill who purchased it for value without notice of the alteration, shall acquire the same rights against the carrier which such holder would have acquired if the bill had not been altered at the time of the purchase.

Alteration of a document transferring title to property, or indicating ownership, cannot destroy the vested title to the property. Wald's Pollock (3d ed.), p. 845, and cases cited. Accordingly, even though a bill is altered, the goods in the carrier's possession belong to the same person they did before alteration, and though it would be possible to hold that the carrier's only relation to the goods became that of a bailee, bound only to turn over the goods on demand, but not bound to fulfil the contract of carriage, this seems an inconvenient result. No hardship is imposed upon the carrier if he is required to fulfill his common law obligation to carry the goods to their destination—an obligation existing independent of the bill.

As to all other obligations, however— obligations resting solely on the contract in the bill, material and fraudulent alteration should excuse so far as parties to the fraud are concerned. The rule of the Negotiable Instruments Law making material alteration a discharge in any event seems too severe a rule for anything but bills of exchange and promissory notes. Bills of lading have never been drawn with quite the same formality and precision.

Section 18.—[LOST OR DESTROYED BILLS.] Where a negotiable bill has been lost or destroyed, the person claiming to be the owner thereof may present a petition, in the county wherein the goods were shipped or wherein they were by the terms of the bill to be delivered, to a court having equity powers. Such petition shall be verified by the oath or affirmation of the petitioner, and shall set forth all the material facts as fully and accurately as possible, including the date of the issue of the bill, a description of the goods, a statement of the value thereof, the name of the person to whom the bill was given, the manner in which the petitioner obtained title to such bill, the date at which he acquired title, and whether such title was absolute or in trust or otherwise qualified, the date and circumstances of the loss or destruction, and a statement that the petitioner is unable by reason thereof to return such bill, and praying for an order that the carrier issue to the petitioner another bill for the goods, or that such carrier, or the carrier by whom the goods were to be delivered at their destination, deliver to the petitioner the goods for which the bill was issued without the surrender of the bill. Whereupon the court shall cause a citation to issue directed to the carrier and to such other person or persons, if any, as may seem to the court to have an interest in the matter, requiring them to appear on a day certain fixed by the court and show cause why the prayer of the petitioner should not be granted. On the return of such citation, the court may in its discretion, after due consideration and hearing of the parties and their evidence, grant the prayer of the petition on condition, however, that the peititoner

shall first pay the carrier's costs and counsel fee, and shall satisfy the carrier's lien upon the goods, and shall also give to the carrier a bond with sufficient sureties in double the value of the goods conditioned to save the carrier harmless from all loss or liability, costs or expenses, which he may incur by reason of the original bill remaining outstanding and uncancelled.

The delivery of the goods or the issue of a new bill, which need not be marked duplicate, under an order of the court as provided in this section, shall not relieve the carrier from liability to one who has purchased the original negotiable bill for value without notice of the petition or of the delivery of the goods or of the issue of a new bill.

The impropriety of having outstanding two negotiable bills makes it essential that even in case such a bill is lost or destroyed a new bill should not be issued without proper precautions being taken. It may at first sight seem to business men wrong that the holder of the bill and the carrier should not be able to make such agreement as they can for a new bill or delivery of the goods, but they are not the only interested parties. Some other person may be then or in the future a holder of the lost bill, and in order to guard his rights some one other than the parties directly interested must oversee the matter. The case differs from that of a lost bill of exchange or note in that such an instrument is merely the promise of its signers. A bill of lading is not only a promise, but it is a representation that goods are in the hands of the carrier. It is because of this representation that a carrier cannot be allowed to issue as many bills of lading as it wishes, whereas the maker of a bill of exchange or note may do so.

Section 19.—[EFFECT OF DUPLICATE BILLS.] A bill upon the face of which the word "Duplicate" is plainly placed shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued and uncancelled at the date of the issue of the duplicate, but no other liability.

Duplicate bills of lading seem to have been somewhat confused by some courts, and perhaps by some business men, with bills of lading issued in sets, in which each part is an original. Banks appear sometimes to lend money on duplicate receipts, and in First Bank of Batavia v. Ege, 109 N. Y. 120, at least the court seemed to treat the duplicate as if it were as good as the original. In Shaw v. United States, 101 U. S. 557, the duplicate was treated as of no more value than a copy. See also Midland Bank v. Mo. Pac. Ry. Co., 132 Mo. 492.

It is obvious that two separate bills representing the goods cannot be permitted. The duplicate, therefore, must not represent the goods. It should, however, be conclusive upon the carrier that there is outstanding an original of the same tenor.

Section 20.—[CARRIER CANNOT SET UP TITLE IN HIMSELF.] No title or right to the possession of the goods, on the part of the carrier, unless such title or right is derived directly or indirectly from a transfer made by the shipper or consignee after the shipment or from the carrier's lien, shall excuse the carrier from liability for refusing to deliver the goods according to the terms of the bill.

This states the common law as to bailees generally. 3 Am. & Eng. Encyc. of Law, 759.

Section 21.—[INTERPLEADER OF ADVERSE CLAIMANTS.] If more than one person claims the title or possession of the goods, the carrier may, either as a defence to an action brought against him for non-delivery of the goods, or as an original suit, whichever

is appropriate, require all known claimants to interplead. In order to avail himself of this remedy the carrier must make no claim on his own behalf other than for the satisfaction of his lien.

The case of Crawshay v. Thornton, 2 Myl. & C. 1, unfortunately held that interpleader was not a proper remedy in such a case. It is, however, the only adequate remedy, and is probably generally allowed in this country. 3 Am. & Eng. Encyc. of Law, 762.

Section 22.—[CARRIER HAS REASONABLE TIME TO DETERMINE VALIDITY OF CLAIMS.] If some one other than the consignee or person claiming under him has a claim to the title or possession of the goods, and the carrier has knowledge of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person claiming under him or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

It seems obviously proper that the carrier should be protected for such brief period as may be necessary to enable him to determine the rights of the claimants.

Section 23.—[ADVERSE TITLE IS NO DEFENCE, EXCEPT AS ABOVE PROVIDED.] Except as provided in the two preceding sections and in Section 13, no right or title of a third person shall be a defence to an action brought by the consignee or person claiming under him against the carrier for failure to deliver the goods on demand.

Except as qualified by the preceding sections, the common law doctrine is here stated that a bailee cannot set up the title of a third person as an excuse for failure to deliver goods. See 3 Am. & Eng. Encyc. of Law, 758.

Section 24.—[LIABILITY FOR MIS-DESCRIPTION.] A carrier shall be liable to the holder of a bill for the non-existence of the goods or the failure of the goods to correspond with the description thereof in the bill at the time of its issue. If, however, the goods are described in a bill merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the consignor.

This section imposes on the carrier a stricter rule than that generally in force in this country in that it makes a carrier liable for an innocent misdescription of the goods. See Hale v. Milwaukee Dock Co., 23 Wis. 276; but as the carrier can readily protect himself by inserting in the bill only what he knows, namely, the marks on the goods or the statements of the shipper regarding them, it seems best to make the carrier responsible for what he asserts.

Section 25.—[ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE BILL HAS BEEN ISSUED.] If goods are delivered to a carrier by the owner or by a person having power to transfer the title in them to a purchaser for value in good faith, and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment

or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier.

Section 26.—[CREDITORS' REMEDIES TO REACH NEGOTIABLE BILLS.] A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction in attaching such bill, or in satisfying the claim by means thereof, as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

As the right of legal garnishment of bailed property is limited by Section 25, the creditor is given by this section such rights as are included under the head of bills of equitable attachment or in aid of execution.

Section 27.—[NEGOTIABLE BILL MUST STATE CHARGES FOR WHICH LIEN IS CLAIMED.] If a negotiable bill is issued for goods, the carrier shall have no lien on such goods, except for charges on those goods for freight, storage, and expenses necessary for the preservation of the goods subsequent to the date of the bill, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

Section 28.—[EFFECT OF SALE.] After goods have been lawfully sold to satisfy a carrier's lien, he shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable.

PART III.

NEGOTIATION AND TRANSFER OF BILLS.

Section 29.—[NEGOTIATION OF NEGOTIABLE BILLS BY DELIVERY.] A negotiable bill may be negotiated by delivery—

(a.) Where, by the terms of the bill, the carrier undertakes to deliver the goods to the bearer, or

(b.) Where, by the terms of the bill, the carrier undertakes to deliver the goods to a specified person or order, or to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank or to bearer.

Section 30.—[NEGOTIATION OF NEGOTIABLE BILLS BY INDORSEMENT.] A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are, by the tenor of the bill, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

Section 31.—[TRANSFER OF BILLS.] A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the receipt or to the goods represented thereby.

A non-negotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right.

Section 32.—[WHO MAY NEGOTIATE A BILL.] A negotiable bill may be negotiated—

(a.) By the owner thereof, or

(b.) By any person to whom the possession or custody of the bill has been entrusted by the owner, if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of the person to whom the possession or custody of the bill has been entrusted, or if at the time of such entrusting the bill is in such form that it may be negotiated by delivery.

Section 33.—[RIGHTS OF PERSON TO WHOM A BILL HAS BEEN NEGOTIATED.] A person to whom a negotiable bill has been duly negotiated acquires thereby—

(a.) Such title to the goods as the person negotiating the bill to him had or had power to convey to a purchaser in good faith for value, and also such title to the goods as the consignee had or had power to convey to a purchaser in good faith for value, and

(b.) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

Section 34.—[RIGHTS OF PERSON TO WHOM A BILL HAS BEEN TRANSFERRED.] A person to whom a bill has been transferred but not negotiated acquires thereby—

(a.) As against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

(b.) The right to notify the carrier of the transfer to him of such receipt, and thereby to acquire the direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill.

Prior to the notification of the carrier by the transferor or transferee, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser of a subsequent sale of the goods by the transferor.

Section 35.—[TRANSFER OF NEGOTIABLE BILL WITHOUT INDORSEMENT.] Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears.

Section 36.—[WARRANTIES ON SALE OF BILL.] A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants—

(a.) That the bill is genuine,

(b.) That he has a legal right to transfer it,

(c.) That he has knowledge of no fact which would impair the validity or value of the bill, and

(d.) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

The clause in the first paragraph beginning "including" was inserted to avoid any possible misapprehension as to the scope of Section 38.

Section 37.—[INDORSER NOT A GUARANTOR.] The indorsement of a bill shall not make the indorser liable for any failure on the part of the maker or previous indorsers of the bill to fulfill their respective obligations.

Section 38.—[NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.] A mortgagee or pledgee of a bill who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.

There are several English decisions to the effect that the holder of a bill of exchange having a forged bill of lading as security is not liable to refund payment of the draft if he receives payment from the drawee. To the same effect are Hoffman v. Bank, 12 Wall. 181; Goetz v. Bank, 119 U. S. 551, and see Daniel on Neg. Inst. §§ 174, 175.

In Landa v. Lattin, 19 Tex. Civ. App. 246, however, without referring to these authorities, the court went to the extreme length of holding that the holder of a bill of lading taken for security on the discount of a draft succeeded to all the liabilities of his transferor, the seller of the goods, and was to be regarded as warranting the quality of the goods to the same extent as the seller. This decision, though opposed to both authority and reason, was soon followed in Finch v. Gregg, 126 N. C. 176, and Searles v. Smith Grain Co., 80 Miss. 688. A contrary decision was, however, rendered in Tolerton-Stetson Co. v. Anglo-California Bank, 112 Ia. 706, and more recently Landa v. Lattin has been overruled in its own state. Blaidsell Co. v. Citizens' Nat. Bank, 96 Tex. 626.

Section 39.—[WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE, OR DURESS.] The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was induced by fraud, mistake, or duress to entrust the possession or custody of the bill to such person, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

Section 40.—[SUBSEQUENT NEGOTIATION.] Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

Section 41.—[FORM OF THE BILL AS INDICATING RIGHTS OF BUYER AND SELLER.] Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of title or right to the possession of goods as follows:

(a.) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the title to the goods to the buyer.

(b.) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c.) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d.) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for valuable consideration, the bill or goods from the buyer, shall obtain the title in the goods, although the draft has not been honored, provided that such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Section 42.—[NEGOTIATION DEFEATS VENDOR'S LIEN.] Where a negotiable bill has been negotiated to a person as buyer or owner of the goods, and that person negotiates the bill to a person who purchases it in good faith and for value, then, if such last-mentioned negotiation was by way of sale, any vendor's lien or right of stoppage in transitu which might have been exercised prior thereto shall be defeated, and if such last-mentioned negotiation was by way of pledge or other disposition for value, any vendor's lien or right of stoppage in transitu which might have been exercised prior thereto, shall be exercised only subject to the rights of the person to whom the last-mentioned negotiation was made.

Section 43.—[STOPPAGE IN TRANSITU.] When notice of stoppage in transitu is given by an unpaid seller to a carrier in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller, and shall not thereafter be liable to the buyer for so doing. The expenses of such redelivery must be borne by the seller. If, however, a negotiable bill representing the goods has been issued by the carrier, he may demand the surrender of such bill, or, at the seller's option, a bond with sufficient sureties indemnifying the carrier or other bailee from liability to any holder of such bill, before redelivering the goods.

The carrier shall be liable to any holder of such negotiable bill who purchased it in good faith for value, whether such purchase was before or after the redelivery of the goods to the seller.

The part of the act dealing with negotiation as a whole follows closely the Sales and Warehouse Receipts Acts.

PART IV.

CRIMINAL OFFENCES.

Section 44.—[ISSUE OF BILL FOR GOODS NOT RECEIVED.] A carrier, or any officer, agent, or servant of a carrier, who issues or aids in issuing a bill knowing that the goods for which such bill is issued have not been actually received by such carrier, or are not under his actual control at the time of issuing such bill, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 45.—[ISSUE OF BILL CONTAINING FALSE STATEMENT.] A carrier, or any officer, agent, or servant of a carrier, who fraudulently issues or aids in fraudulently issuing a bill for goods knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 46.—[ISSUE OF DUPLICATE BILLS NOT SO MARKED.] A carrier, or any officer, agent, or servant of a carrier, who issues or aids in issuing a duplicate or additional negotiable bill for goods knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," except in the case provided for in Section 18, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 47.—[DELIVERY OF GOODS WITHOUT OBTAINING NEGOTIABLE BILL.] A carrier, or any officer, agent, or servant of a carrier, who delivers goods out of the possession of such carrier, knowing that a negotiable bill the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession thereof, at or before the time of such delivery, shall, except in the cases provided for in Sections 18 and 28, be guilty of a misdemeanor, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 48.—[NEGOTIATION OF BILL FOR MORTGAGED GOODS.] Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

PART V.

INTERPRETATION.

Section 49.—[VARIATION OF IMPLIED OBLIGATIONS.] Where any right, duty, or liability would arise by implication of law under a bailment to a carrier, it may, unless the contrary is expressly provided, be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract.

Section 50.—[RIGHTS MAY BE ENFORCED BY ACTION.] Where any right, duty, or liability is declared by this act, it may, unless otherwise provided in this act, be enforced by action.

Section 51.—[WHEN RULES OF COMMON LAW STILL APPLICABLE.] In any case not provided for in this act, the rules of the common law, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall be applied.

Section 52.—[INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 53.—[DEFINITIONS.] (1.) In this act, unless the context or subject matter otherwise requires—

"Action" includes counter claim, set-off, and suit in equity.

"Bill" means bill of lading, and includes all documents in which a common carrier acknowledges the receipt of goods for carriage, and promises, expressly or impliedly, to deliver such goods to a person at a place to which such goods are to be carried.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Delivery" means voluntary transfer of possession from one person to another.

"Goods" mean chattels or merchandise in course of transportation, or which has been or is about to be transported.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

(2.) A thing is done "in good faith," within the meaning of this act, when it is fact done honestly, whether it be done negligently or not.

Section 54.—[ACT DOES NOT APPLY TO EXISTING BILLS.] The provisions of this act do not apply to bills made and delivered prior to the passage thereof.

Section 55.—[INCONSISTENT LEGISLATION REPEALED.] All acts or parts of acts inconsistent with this act are hereby repealed.

Section 56.—[TIME WHEN THE ACT TAKES EFFECT.] This act shall take effect on the ———— day of ———, one thousand nine hundred and

Section 57.—[NAME OF ACT.] This act may be cited as the Bills of Lading Act.

EXHIBIT "D."

DRAFT OF AN ACT TO MAKE UNIFORM THE LAW OF PARTNERSHIP.

Be it enacted, etc., as follows:

PART I.

NATURE OF PARTNERSHIP.

Section 1.—[PARTNERSHIP DEFINED.] (1.) A partnership is a legal person formed by the association of two or more individuals for the purpose of carrying on business with a view to profit.

(2.) But a joint stock association, whether incorporated or not incorporated, whose members are fluctuating by reason of the transferability of their shares, and whose business is also managed by a board of directors, committee or individual officer, is not a partnership within the provisions of this act.

Section 2.—[RULES DETERMINING EXISTENCE OF PARTNERSHIP.] In determining whether a partnership does or does not exist, regard shall be had to the following rules:

(1.) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2.) The sharing of gross returns does dot of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3.) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

(a.) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

(b.) A contract for the remuneration of a servant or agent or landlord of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent or landlord a partner in the business or liable as such:

(c.) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:

(d.) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the good-will of the business is not by reason only of such receipt a partner in the business or liable as such.

Section 3.—[SELLER OF GOOD-WILL A POSTPONED CREDITOR.] In the event of any buyer of a good-will in consideration of a share of the profits of the business being adjudged a bankrupt, entering into an agreement to pay his creditors less than one hundred cents on the dollar, or dying in insolvent circumstances, the seller of the good-will shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the buyer have been satisfied.

Section 4.—[LENDER A SPECIAL PARTNER.] The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, makes the lender not a general partner, but a special partner only. Provided that the lender has complied with all the formalities prescribed by the sections of this act relating to the formation of limited or special partnerships. But if such lender fails to comply with these formalities, he shall be liable to the creditors of the partnership as if he were a general partner.

Section 5.—[FIRM AN ENTITY DISTINCT FROM THE PARTNERS.] (1.) Persons who have entered into partnership with one another are for the purposes of this act called collectively a firm, and the name under which their business is carried on is called the firm name.

(2.) The legal title to partnership property is vested in the firm, if property acquired under similar circumstances by a natural person would vest in such person. In all other cases the partnership property belongs to the firm as a *cestui que trust* or equitable owner.

(3.) Upon obligations in favor of the firm against a stranger or against one or more of the partners, the firm as such is the obligee; and upon obligations in favor of a stranger or of one or more of the partners against the firm, the firm as such is the obligor.

(4.) Actions upon claims in favor of or against a firm must be brought in the firm name.

Section 6.—[REGISTRATION OF PARTNERSHIPS.] (1.) Every partnership transacting business in this state must file, in the office of the county clerk of the county in which its principal office or place of business is situated, a certificate to be indexed by said clerk stating the firm name of the partnership, the general nature of its business, and the full name and residence of each member of the partnership.

(2.) The certificate prescribed in the foregoing paragraph must be signed by the partners and acknowledged by some officer authorized to take acknowledgments of conveyances of real estate.

(3.) Upon every change of members of a partnership transacting business in this state, a new certificate, duly signed and acknowledged by all the partners in the new firm must be filed with the clerk of the county in which its principal office or place of business is situated.

(4.) Every county clerk shall keep a register of the names of firms and persons mentioned in the certificates filed in his office pursuant to this act, entering in alphabetical order the name of every such partnership and of each partner interested therein.

(5.) After the passage of this act no partnerships doing business contrary to the provisions of this act shall begin or maintain an action upon or on account of any contracts made on transactions had with such partnership until the certificate prescribed by this section has been filed.

PART II.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM AS SUCH.

Section 7.—[PARTNER AGENT OF THE FIRM AS TO PARTNERSHIP BUSINESS.] Every partner is an agent of the firm for the purpose of the business of the partnership; and the acts of every partner who does any act, including the execution in the firm name of deeds of obligation or conveyance, for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

Section 8.—[FIRM NOT BOUND BY ACTS OF PARTNER WITHOUT THE SCOPE OF FIRM BUSINESS.] Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Section 9.—SECRET RESTRICTIONS UPON POWER OF PARTNER INEFFECTUAL AGAINST STRANGERS.] If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Section 10.—[FIRM BOUND BY ACTS OF PARTNER COMMITTED WITHIN SCOPE OF PARTNERSHIP BUSINESS.] Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Section 11.—[LIABILITY OF FIRM FOR PARTNER'S BREACH OF TRUST.] In the following cases; namely—

(a.) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(b.) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm; the firm is liable to make good the loss.

Section 12.—[EACH PARTNER ANSWERABLE FOR FIRM LIABILITIES.] An execution issued upon a judgment against a firm shall operate only upon the partnership property. But the plaintiff in any such judgment may file a bill in equity against any one or more of the partners, setting forth his judgment and the insufficiency of the partnership property to satisfy the same, and upon proof of these allegations shall be entitled to a decree for the amount of the partnership liability under the judgment against it, and to execution thereon against the partner or partners made defendants to the bill.

Section 13.—[ONE MAY BE LIABLE AS A PARTNER BY ESTOPPEL.] (1.) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2.) Provided that where, after a partner's death the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death.

Section 14.—[FIRM BOUND BY ADMISSION OF PARTNER.] An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, or winding up is evidence against the firm.

Section 15.—[NOTICE TO PARTNER IS NOTICE TO FIRM.] Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Section 16.—[LIABILITIES OF INCOMING AND OUTGOING PARTNERS.] (1.) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he becomes a partner.

(2.) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3.) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Section 17.—[REVOCATION OF GUARANTY BY CHANGE IN FIRM.] A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the

firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given

Section 18.—[PARTNER EXONERATED FROM FUTURE LIABILITY BY RENOUNCING FUTURE PROFITS.] (1.) A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person and to his co-partners that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

(2.) After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his co-partners may proceed to dissolve the partnership.

PART III.

RELATION OF PARTNERS TO THE FIRM.

Section 19.—[RELATIONS VARIED BY GENERAL CONSENT.] The mutual rights and duties of the firm and the partners, whether ascertained by agreement or defined by this act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing.

Section 20.—[PARTNERSHIP PROPERTY TO BE USED FOR FIRM PURPOSES.] All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

Section 21.—[PROPERTY BOUGHT WITH FIRM MONEY IS PARTNERSHIP PROPERTY.] Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

Section 22.—[NATURE OF PARTNER'S INTEREST.] A partner has no beneficial interest, legal or equitable, in any specific property whether real or personal belonging to the partnership, but only a right to receive in cash his proportion of the surplus of the firm assets remaining after all the claims of firm creditors have been satisfied.

Section 23.—[PARTNER'S INTEREST SUBJECT TO CHANGING ORDER.] (1i) After the commencement of this act an attachment or execution shall not issue against any partnership property except on a judgment against the firm.

(2.) The court, may, on the application of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct

all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favor of the judgment creditor by the partner, or which the circumstances of the case may require.

(3.) The firm through the other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

Section 24.—[RULES DETERMINING RIGHTS AND DUTIES OF FIRMS AND PARTNERS.] The interest of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement expressed or implied between the partners, by the following rules:

(1.) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.

(2.) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(a.) In the ordinary and proper conduct of the business of the firm; or

(b.) In or about anything necessarily done for the preservation of the business or property of the firm.

(3.) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the legal rate per annum from the date of the payment or advance.

(4.) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

(5.) Every partner may take part in the management of the partnership business.

(6.) No partner shall be entitled to remuneration for acting in the partnership bnsiness.

(7.) No person may be introdnced as a partner without the consent of all existing partners.

(8.) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9.) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Section 25.—[NO EXPULSION OF A PARTNER.] No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Section 26.—[DETERMINATION OF PARTNERSHIP AT WILL.] (1.) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2.) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

Section 27.—[CONTINUANCE OF PARTNERSHIP BEYOND FIXED TERM.] (1.) Where a partnership entered into for a fixed

term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2.) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

Section 28.—[DUTY OF PARTNER TO RENDER ACCOUNTS.] Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Section 29.—[PARTNER ACCOUNTABLE AS A FIDUCIARY.] (1.) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership or from any use by him of the partnership property name or business connection.

(2.) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

Section 30.—[PARTNER TO ACCOUNT FOR HIS PROFITS OF A RIVAL BUSINESS.] If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Section 31.—[RIGHTS OF ASSIGNEE OF A PARTNER'S SHARE.] (1.) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2.) In case of a dissolution of the partnership, whether as respects all the partners, or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

PART IV.

DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES.

Section 32.—[DISSOLUTION BY LAPSE OF TIME OR NOTICE.] Subject to any agreement between the partners, a partnership is dissolved—

(a.) If entered into for a fixed term, by the expiration of that term:

(b.) If entered into for a single adventure or undertaking by the termination of that adventure or undertaking.

(c.) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

Section 33.—[DISSOLUTION BY DEATH, BANKRUPTCY OR CHARGE.] (1.) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2.) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this act for his separate debt.

Section 34.—[DISSOLUTION BY ILLEGALITY OF THE PARTNERSHIP.] A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Section 35.—[DISSOLUTION BY DECREE OF THE COURT.] On application by a partner the court may decree a dissolution of the partnership in any of the following cases:

(a.) When a partner is found lunatic by inquisition, or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner:

(b.) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract:

(c.) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated prejudicially to affect the carrying on of the business:

(d.) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him:

(e.) When the business of the partnership can only be carried on at a loss:

(f.) Whenever in any circumstances have arisen, which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

Section 36.—[NOTICE OR KNOWLEDGE OF DISSOLUTION ESSENTIAL AS TO THIRD PERSONS.] (1.) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2.) Persons who have had business relations with a firm by which a credit is raised upon the faith of the partnership must have actual knowledge or special notice equivalent to knowledge of the termination of the partnership.

(3.) An advertisement in a newspaper of the place (or of each place, if more than one) in which at the time of dissolution the partnership business was carried on shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(4.) If the fact of dissolution is notorious in the community in which a person, who had not dealings with the firm before the dissolution, is engaged in business, he cannot charge, a retired partner although the dissolution was not advertised in a newspaper and although he was in fact ignorant of the dissolution.

(5.) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement respectively.

Section 37.—[RIGHT OF PARTNERS TO NOTIFY DISSOLUTION.] On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Section 38.—[CONTINUING AUTHORITY OF PARTNERS FOR PURPOSE OF WINDING UP.] After the dissolution of a partnership the authority of each partner to bind the firm and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Section 39.—[RIGHTS OF PARTNERS AS TO APPLICATION OF PARTNERSHIP PROPERTY.] On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind up the business and affairs of the firm.

Section 40.—[APPORTIONMENT OF PREMIUM WHERE PARTNERSHIP PREMATURELY DISSOLVED.] Where one partner has paid a premium to another on entering into a partner-

ship for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

(a.) the dissolution is, in the judgment of the court wholly or chiefly due to the misconduct of the partner who paid the premium, or

(b.) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Section 41.—[RIGHTS WHERE PARTNERSHIP DISSOLVED FOR FRAUD OR MISREPRESENTATION.] Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a.) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is

(b.) to stand in the place of the creditors of the firm for any payments made by him in respect to the partnership liabilities, and

(c.) to be indemnified by the person guilty to the fraud or making the representation against all the debts and liabilities of the firm.

Section 42.—[RIGHT OF OUTGOING PARTNER TO SHARE PROFITS AFTER DISSOLUTION.] (1.) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner of his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the legal rate per annum on the amount of his share of the partnership assets.

(2.) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the forgoing provisions of this section.

Section 43.—[RETIRING OR DECEASED PARTNER'S SHARE TO BE A DEBT.] Subject to any agreement between the partners, the amount due from the continuing firm to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Section 44.—[RULE FOR DISTRIBUTION OF ASSETS OF FINAL SETTLEMENT OF ACCOUNTS.] In settling accounts be-

tween the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

(a.) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits:

(b.) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:

(1.) In paying the debts and liabilities of the firm to persons who are not partners therein:

(2.) In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital:

(3.) In paying to each partner rateably what is due from the firm to him in respect of capital:

(4.) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

PART V.

LIMITED PARTNERSHIP.

Section 45.—A limited partnership may be formed by two or more persons for the transaction of any lawful business except the business of insurance.

Section 46.—Such partnership shall consist of one or more general partners who shall be jointly and severally liable for all the debts of the partnership, and of one or more special partners who shall contribute to the common stock in actual cash payment a specified amount of capital and shall not be personally liable for the debts of the partnership except as hereinafter provided.

Section 47.—The business of such partnership shall be conducted under a firm name in which the names of the general partners only shall be inserted, without the addition of the word "company" or of any other general term; or, with the consent of the members of a former firm or their legal representatives to whose business such partnership lawfully succeeds, it may be conducted under the name of such former firm. The names of not more than three general partners shall be required to be inserted in such firm name. A special partner who consents or is privy to the use of his name in the firm name shall be liable as a general partner; but if his surname in the same as that of a general partner whose surname is used in the firm name, or if it appears in the name of a former firm adopted as aforesaid by such partnership, he shall not be so liable.

Section 48.—The members of such partnership shall make and severally sign a certificate, which shall contain the firm name under which the business of the partnership is to be conducted, the names and residences of all the partners distinguishing who are general and who special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, the time when the partnership is to begin

and the time when it is to terminate. If a false statement is made in such certificate, all the partners shall be liable as general partners.

Section 49.—Such certificate shall be acknowledged by all the partners before a justice of the peace or, if a partner resides out of the state, before a United States consul, notary public or other magistrate authorized to take acknowledgements of deeds of land in this state, and shall be filed in the office of the Secretary of the State and recorded in said office in a book to be kept for that purpose which shall be open to public inspection. The fee for filing such certificate shall be one dollar.

Section 50.—A copy of such certificate shall, immediately after such filing, be published at once in each of six successive weeks in a newspaper published in the place (or in each place if more than one) where the partnership business is to be carried on. Within sixty days after the filing of said certificate, an affidavit of one of said partners stating the newspaper in which and the dates upon which the copy of said certificate was published shall be filed in the office of the Secretary of the State and recorded as provided in the preceding section.

Section 51.—Upon the renewal or extension of a limited partnership beyond the time originally limited for its termination, the capital contributed by the special partners shall equal or exceed the aggregate capital originally contributed by them, and a certificate of such renewal or extension stating the amount of capital contributed by each of the special partners at such renewal or extension and that the whole amount thereof equals or exceeds the amount originally contributed by them, shall be made, acknowledged, filed, recorded and published and an affidavit of publication filed and recorded in like manner as is herein provided for the certificate of its original formation.

Section 52.—During the continuance of such partnership no part of its capital shall be withdrawn, nor shall any division of interest or profits be so made as to reduce such capital below the amount stated in said certificates; but a special partner may withdraw from the profits the interest on the capital contributed by him at any rate agreed on not exceeding six per cent per annum, if such withdrawal does not impair the capital. If at any time during the continuance or at the termination of the partnership its assets are not sufficient to pay its debts, the special partners shall severally be held liable for all money by them in any way withdrawn or received, except as above provided, with interest thereon from the time when it was so withdrawn or received.

Section 53.—All suits relating to the business of such partnerships shall be prosecuted by and against the firm. The equitable proceeding by a judgment creditor of the firm described in Section 12 of this act shall be used against the general partners only, except when the special partners are held liable as general partners and except when special partners are held severally liable on account of money by them withdrawn from the common stock as provided in the preceding section, in which case all partners so liable, shall be subject to this equitable proceeding.

Section 54.—No such partnership shall be dissolved, except by operation of law, before the time specified in the certificate of its formation or renewal or extension, unless a notice of such dissolution is filed and recorded in the office of the Secretary of the State, and is published and an affidavit of publication is made as provided in Section 50.

Section 55.—Except as provided in this act the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

SUPPLEMENTAL.

Section 56.—[DEFINITIONS OF "COURT" AND "BUSINESS."] In this act, unless the contrary intention appears,—

The expression "court" includes every court and judge having jurisdiction in the case:

The expression "business" includes every trade, occupation, or profession.

Section 57.—[SAVING FOR RULES OF EQUITY AND COMMON LAW.] The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this act.

Section 58.—[INCONSISTENT LEGISLATION REPEALED.] All acts or parts of acts inconsistent with this act are hereby repealed.

Section 59.—[TIME WHEN ACT TAKES EFFECT.] This act shall come into operation on the day of one thousand nine hundred and

Section 60.—[NAME OF ACT.] This act may be cited as the Partnership Act, 190—.

EXHIBIT "E."

An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to manufacture within any Territory or the District of Columbia any article of food or drug which is adulterated or misbranded, within the meaning of this Act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not to exceed five hundred dollars or shall be sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court, and for each subsequent offense and conviction thereof shall be fined not less than one thousand dollars or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.

Sec. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this Act, is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this Act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court: *Provided*,—That no article shall be deemed misbranded or adulterated within the provisions of this Act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this Act.

Sec. 3. That the Secretary of the Treasury, the Secretary of Agri-

culture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

Sec. 4. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.

Sec. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this Act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

Sec. 6. That the term "drug," as used in the Act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

Sec. 7. That for the purposes of this Act an article shall be deemed to be adulterated:

In case of drugs:

First. If, when a drug is sold under or by a name recognized in

the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation: *Provided*, That no drug defined in the United State Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of confectionery:

If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

In the case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption.

Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

Sec. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

That for the purposes of this Act an article shall also be deemed to be misbranded:

In case of drugs:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

In the case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucane, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further*, That nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding.

Sec. 9. That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall con-

tain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this Act.

Sec. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this Act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of that jurisdiction: *Provided, however*, That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

Sec. 11. The Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request from time to time, samples of foods and drugs which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture, and have the right to introduce testimony, and if it appear from the examination of such samples that any article of food or drug offered to be imported into the United States is adulterated or misbranded within the meaning of this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a

penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

Sec. 12. That the term "Territory" as used in this Act shall include the insular possessions of the United States. The word "person" as used in this Act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

Sec. 13. That this Act shall be in force and effect from and after the first day of January, nineteen hundred and seven.

Approved, June 30, 1906.

REPORT

OF THE

COMMISSIONERS

ON

UNIFORM STATE LAWS

TO THE

GOVERNOR OF PENNSYLVANIA.

WILLIAM H. STAAKE,
Chairman.
WALTER GEORGE SMITH,
C. LARUE MUNSON,
Commissioners.

HARRISBURG, PA.:
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1909


VIRTUE
LIBERTY AND
INDEPENDENCE

REPORT

To His Excellency, the Honorable Edwin S. Stuart, Governor of the Commonwealth of Pennsylvania:

The undersigned, the Commissioners appointed by the Governor of the Commonwealth, under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved the thirty-first day of March, 1905, which Act was, in a measure, supplemental to a prior Act of the twenty-third day of May, 1901, would respectfully report:

Two of the Commissioners attended the Seventeenth Annual Conference of the Commissioners on Uniform State Laws, held at Portland, Maine, August 22, 23 and 24, 1907.

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners appointed by the Governors of the different States under the authority of their respective legislative bodies. The conference is held annually, usually preceding the meeting of the American Bar Association. The Commissioners, in addition to their duties to their respective Commonwealths, in recommending and furthering the enactment of uniform State laws, also have the authority to confer with the Commissioners of other States and recommend forms of acts or measures to bring about uniform laws in the execution and proof of deeds and wills, in the laws concerning negotiable instruments, marriage and divorce, bills of lading, sales of personal property, certificates of stock, partnership, food laws and other subjects where uniformity seems practicable and desirable. The officers of the National Conference consist of a president, vice-president, secretary, assistant secretary and treasurer, elected annually, and an executive committee composed of these officers exclusive of the assistant secretary, and four Commissioners. The present vice-president of the National Conference and the Chairman of the Executive Committee are Commissioners from Pennsylvania, while all of the Commissioners from the Commonwealth are active members of important committees of the National Conference.

The time of this Conference at the sessions of 1907 and 1908 has been principally taken up in the consideration and adoption of the Uniform Sales Act, the Uniform Warehouse Receipts Act, the Uniform Bills of Lading Acts and the act to make uniform the laws of certificates of stock.

The draft of a proposed Partnership Act was submitted, at the session of 1907, by the draftsman, Dean James Barr Ames, Dean of the Law School of Harvard University. It was then resolved that the draftsman be requested to prepare appropriate notes, the draft to be sent out for criticism and suggestions, in accordance with the practice of the Conference.

The Committee on the Torrens System and Registration of Titles to Land, reported their belief "that if each State would investigate this subject, in the end they would adopt it, and therefore they recommend to each State the adoption of a law such as was adopted in Louisiana and New York." This report was received by the Conference and the Commissioners representing the various States were requested to address their Legislatures on the subject, praying that they investigate the Torrens System on the lines laid down in the laws referred to by the Committee.

The Committee on Purity of Articles of Commerce reported that uniformity of laws throughout the land will be greatly promoted by each State adopting substantially the Federal act, whereupon the Conference adopted the following resolution:

Resolved, That the Conference recommend that the Federal Pure Food and Drugs Act be considered practically as the type or model of an act to be adopted by the various States, with such changes as are necessary to adapt it to the conditions prevailing in each individual State.

The Committee on Marriage and Divorce reported the action of the Divorce Congress held in Washington and Philadelphia on the subject of Uniform Marriage and Marriage License Laws, and also the Uniform Divorce Law, with the following resolutions:

Resolved, That this Conference has learned with great satisfaction that the National Divorce Congress, composed of delegates from the States and Territories, appointed at the invitation of the Governor of Pennsylvania, has completed the work for which it was convened, and has adopted the draft of a uniform law regulating the annulment of marriage and divorce, which in the opinion of this Conference is a just and proper solution of many vexed questions upon which the courts of the various States have differed.

Resolved, That in the opinion of this Conference the proposed uniform laws, "Regulating the Annulment of Marriage and Divorce," "Providing for Return of Statistics relating to Divorce Proceedings," and "Providing for Return of Marriage Statistics," should be adopted in all of the States and Territories of the United States, and in the District of Columbia, it being understood, however, that the Conference expresses the same opinion on the subject of causes as that embodied in the resolution of the Divorce Congress, viz: "This

Congress desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any State, and in those States where causes are restricted, no change is called for."

Resolved, That the various Commissioners be instructed to report to the Governors of the different States the conclusions of this Conference, and to do all in their power to secure the adoption of the said uniform laws in the States and Territories and District of Columbia.

After full debate these resolutions were unanimously adopted.

The Conference adopted also the following resolution:

Resolved, That it is the sense of this Conference that the Committee on Marriage and Divorce take up actively the consideration of the question of (1) Family Desertion and Non-support Law; and (2) A Law Regulating Marriage and Licenses to Marry; and that the Committee, as soon as may be possible, report to the Conference a tentative form of uniform law on each of those subjects, for the consideration of the Conference.

The act to make uniform the law relating to the sale of goods and an act to make uniform the law of warehouse receipts, exhibits to the report of the Commissioners made to the Governor of the Commonwealth December 20, 1906, being finally adopted by the National Conference, and recommended for passage by the Legislature of the several States, were before the Legislature of the Commonwealth of Pennsylvania, and, after a number of hearings before the proper committees, attended by your Commissioners, and by the representatives of important commercial bodies, were favorably recommended for adoption. The Sales Act passed the Senate but was not reported out of Committee by the House. The Warehouse Receipts Act passed the Senate and was favorably reported out of the Committee of the House but did not reach a final vote before adjournment.

The Uniform Divorce Law recommended by the National Divorce Congress, assembled at the invitation of the Governor of Pennsylvania, was also introduced at the session of the Legislature of 1907, but was not enacted before the adjournment.

At the Annual Meeting of the Pennsylvania Bar Association in June, 1908, the Uniform Sales Act and the Uniform Divorce Act were very fully discussed and were, by a vote of the Association, recommended to the Legislature of the Commonwealth for adoption at the next session. These two acts concerning sales and divorce had been annotated and mailed to each member of the Pennsylvania Bar Association, to the various local Bar Associations and to leading members of the bar in Pennsylvania, in ample time to make them

familiar with the provisions of the acts prior to the meeting of the Association. There was thus given the fullest opportunity to the bar of the Commonwealth to criticise and study both acts before their consideration by the Bar Association of the State.

The Negotiable Instruments Act originally recommended by the National Conference, has been adopted by the following States:

New York, Connecticut, Colorado, Florida, Massachusetts, Maryland, Virginia, Rhode Island, Ohio, Iowa, New Jersey, Montana, Idaho, Kentucky, Louisiana, Kansas, Tennessee, North Carolina, Wisconsin, North Dakota, Utah, Oregon, Washington, District of Columbia, Arizona, Pennsylvania, Wyoming, Missouri, Michigan, Nebraska, Alabama, Illinois, New Mexico, West Virginia, Hawaii.

The Warehouse Receipts Act has been adopted by the following States:

Iowa, New Jersey, Montana, Illinois, Massachusetts, Idaho, Louisiana, Connecticut, New York, Ohio, Maryland, Virginia, Rhode Island.

The Sales Act has been adopted by the following States:

Arizona, Connecticut, New Jersey, Massachusetts, Rhode Island, Ohio.

The Uniform Divorce Act has been adopted by the States of New Jersey and Delaware.

The Torrens System of Registration of Titles to Land was reported by the Commissioners from the State of New York as having been adopted by the Legislature of that State.

The Eighteenth Conference of the Commissioners was held in the city of Seattle, State of Washington, on August 21, 22 and 24, 1908, and was attended by all of the Commissioners from Pennsylvania. The time of the Conference was employed principally in the discussion of the uniform law concerning certificates of stock, the second tentative draft of which act was recommitted to the Committee on Commercial Law, after discussion at various sessions by the Conference, sitting as a committee of the whole. The first tentative draft of the Uniform Partnership Act was recommitted to the Committee on Commercial Law to confer with Dean Ames concerning the draft of an act upon the original lines suggested by the Dean to the Conference. Final action on the Bills of Lading Act was postponed until the next meeting of the Conference, in order that the Committee on Commercial Law might have ample time to consider the objections to the published draft of the act made by the Merchants Association of New York, and also to give the Committee more time to ascertain the general consensus of opinion on this subject of the different commercial bodies throughout the United States, and also to make a further exhaustive examination of the

law in the matter of negotiability, and await the result of the formulation of a uniform Bill of Lading with ten conditions made by the Interstate Commerce Commission.

The subject of a uniform law of Common Carriers was recommitted to the Committee on Commercial Law for additional consideration.

A tentative draft of a uniform Incorporation Act, submitted by Commissioner Terry of New York, was referred to the Committee on Uniform Incorporation with power to formulate the draft of an act, print and distribute the same and mail copies thereof to the members of the Conference, so that the act may be considered at the Annual Conference of 1909.

The Conference requested the Committee on Wills, Descent and Distribution to consider if it would be advisable to draft an act providing for a uniform system in the execution of wills.

The Committee on Marriage and Divorce reported tentative drafts on Uniform Desertion and Marriage Laws which were ordered to be printed and made a special order at the session of 1909.

The National Conference of Commissioners has standing committees on Commercial Law, Wills, Descent and Distribution, Marriage and Divorce, Conveyances, Depositions and Proof of Statutes of other States, Insurance, Congressional Action, Appointment of New Commissioners, Purity of Articles of Commerce, Incorporation, Torrens System and Registration of Titles to Land, Banks and Banking, Publicity, and a special Committee on Vital and Penal Statistics. Your Commissioners are members of the Committees on Commercial Law, Marriage and Divorce, Purity of Articles of Commerce and Insurance.

The following States, Territories and Districts have appointed Commissioners to the Conference:

Arkansas, Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin.

At the Eighteenth Annual Conference at Seattle there were present by invitation, with the right of participation in the discussions of the Conference, Professors Samuel Williston and James Barr Ames of the Law School of Harvard University, Robert R. Fox, of Seattle, Washington; J. W. Spangle, representing the National Association of Credit Men, of Seattle, Washington; Thomas

B. Paton, general counsel of the American Bankers' Association, and P. C. Kauffman, Chairman of the Bills of Lading Committee of the Washington Bankers' Association, of Seattle, Washington.

The Act of 1907 making an appropriation of two thousand dollars to the Commissioners for the two fiscal years beginning June 1, 1907, authorized the Commissioners to pay out of this appropriation, as part of their expenses, any sum that might be necessary in their judgment to meet a proportion of the expenses incurred by the National Conference of Commissioners on Uniform State Laws for the Promotions of Uniformity of Legislation in the United States, of which your Commissioners are members, in connection with any meeting at which they or any of them are in attendance. In pursuance of this provision of the Act, the sum of five hundred dollars in two instalments has been paid to the treasurer of the National Conference.

Earnest efforts are being made by the appropriate committees of the Conference to secure the passage of bills heretofore recommended for adoption, and also to secure from each State a reasonable proportion for the payment of the expenses of the Conference.

Your Commissioners would most respectfully ask Your Excellency to recommend to the members of the Legislature of the Commonwealth of Pennsylvania, the adoption, at its approaching session, of the Act to make uniform the law of warehouse receipts, and the Act to make uniform the law of sales, and the uniform divorce act, which two last named acts, as already stated, have received the endorsement and approval of the members of the Pennsylvania Bar Association, and the law of warehouse receipts, which has received the approval of the warehouse men and other commercial associations of the Commonwealth.

Your Commissioners would also call the attention of Your Excellency to the unanimous recognition of the Uniform Divorce Act recommended by the National Divorce Congress, by the recent Federal Council, assembled in the city of Philadelphia, composed of about four hundred delegates, eminent clergymen and laymen, representing some thirty constituent bodies and eighteen millions of communicant members in the United States, and that the same Uniform Divorce Act has recently been endorsed at the meeting of the State Federation of Pennsylvania Women, at the meeting held in Pittsburg.

It has been the policy of the National Conference, in its efforts to secure uniformity of legislation among the States of the Union, to take up one subject after another connected with the commercial interests of the country, such as negotiable instruments, sales, warehouse receipts, bills of lading, certificates of stock, partnership, com-

mon carriers incorporation, etc., concerning which there is a necessity and a demand for uniformity of legislation throughout the country. In its labors, the Conference has the assistance of experts who are specialists on the respective subjects, and no Act is recommended for adoption by the Conference until after it has been thoroughly discussed in committee, submitted to the Bar Association and commercial bodies of each Commonwealth, and finally discussed by the Conference sitting as a committee of the whole.

It is confidently asserted that the labors of the Commissioners on Uniform State Laws will result in the adoption of uniform enactments which will unify the business and commercial sentiments of the country, and do much to avoid the differences in the law which, for constitutional reasons, cannot be corrected by the acts of the National Congress.

Your Commissioners trust that Your Excellency may also, in your annual message, recommend to the Legislature of the Commonwealth the passage of an act supplemental to the act approved the thirty-first day of March, 1905, continuing the authority for the appointment of Commissioners for an additional period of four years, and also a renewal of the appropriation made in 1907 for the payment of the actual outlay of the Commissioners appointed to represent the Commonwealth, and towards the payment of the expenses of the National Conference of Commissioners.

All of which is respectfully submitted,

WILLIAM H. STAAKE,
Chairman.

WALTER GEORGE SMITH,
C. LA RUE MUNSON,
Commissioners.

Commonwealth of Pennsylvania

REPORT OF THE COMMISSIONERS ON

Uniform State Laws

TO THE GOVERNOR OF PENNSYLVANIA

WILLIAM H. STAAKE, *Chairman*

WALTER GEORGE SMITH : ROBERT SNODGRASS

Commissioners

HARRISBURG:

C. E. AUGHINBAUGH, PRINTER TO THE STATE OF PENNSYLVANIA

1911

REPORT

To His Excellency,
The Honorable Edwin S. Stuart,
Governor of the Commonwealth of Pennsylvania:

The undersigned, the Commissioners appointed by your Excellency, under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved the eighth day of May, one thousand nine hundred and nine, which was supplemental to the Act of the twenty-third day of May, one thousand nine hundred and one, would

Respectfully Report:

Since the last report of the Commissioners to your Excellency, they have attended the Nineteenth and Twentieth Annual Conferences of Commissioners on Uniform State Laws, the former held at Detroit, in the State of Michigan, August 19, 20, 21 and 23, 1909; the latter, at Chattanooga, in the State of Tennessee, August 25, 26, 27 and 29, 1910. At the Detroit Conference, the State of Pennsylvania was represented by Commissioners William H. Staake and Walter George Smith, of Philadelphia, and Commissioner Robert Snodgrass, of Harrisburg, who had been appointed a commissioner by your Excellency on the resignation of Commissioner Cyrus LaRue Munson, of Williamsport. At the Chattanooga Conference, the State of Pennsylvania was represented by Commissioners William H. Staake and Walter George Smith, of Philadelphia; Commissioner Robert Snodgrass, who was en route to the Conference, being compelled to return by reason of the death of an intimate friend.

The National Conference of Commissioners is now made up of Commissioners from the following States, Territories and Districts of the United States:

Alabama,	District of Columbia,	Iowa,
Arizona,	Florida,	Kansas,
Arkansas,	Georgia,	Kentucky,
California,	Hawaii,	Louisiana,
Colorado,	Idaho,	Maine,
Connecticut,	Illinois,	Maryland,
Delaware,	Indiana,	Massachusetts,

Michigan,	North Carolina,	South Dakota,
Minnesota,	North Dakota,	Tennessee,
Mississippi,	Ohio,	Texas,
Missouri,	Oklahoma,	Utah,
Montana,	Oregon,	Vermont,
Nebraska,	Pennsylvania,	Virginia,
New Hampshire,	Philippine Islands,	Washington,
New Jersey,	Porto Rico,	West Virginia,
New Mexico,	Rhode Island,	Wisconsin,
New York,	South Carolina,	Wyoming.

The Commissioners from these various jurisdictions are organized into a national body for the best accomplishment of the very important work for which they have been appointed. The Commissioners, usually three from each State, are appointed by the Governors thereof, usually for five years, as Commissioners on uniform legislation of their respective States, but with authority to confer with the Commissioners of other States and recommend forms of bills or measures to bring about uniformity of laws in the execution and proof of deeds and wills, in the laws of bills and notes, marriage and divorce, and such other subjects concerning which uniformity appears to be necessary and desirable.

As indicating the subjects under consideration by the National Conference, we would state that it has an Executive Committee, of which Commissioner William H. Staake, of Pennsylvania, is the Chairman;

And the following standing Committees:

Commercial Law: Commissioner Talcott H. Russell, of Connecticut, Chairman;

Wills, Descent and Distribution: Commissioner W. O. Hart, of Louisiana, Chairman;

Marriage and Divorce: Commissioner Edward W. Frost, of Wisconsin, Chairman;

Conveyances: Commissioner Amasa M. Eaton, of Rhode Island, Chairman;

Depositions and Proof of Statutes of other States: Commissioner F. G. Bromberg, of Alabama, Chairman;

Insurance: Commissioner Frank Bergen, of New Jersey, Chairman;

Congressional Action: Commissioner Aldis B. Browne, of the District of Columbia, Chairman;

Appointment of New Commissioners: Commissioner Oliver A. Harker, of Illinois, Chairman;

Purity of Articles of Commerce: Commissioner Walter E. Coe, of Connecticut, Chairman;

Uniform Incorporation Law: Commissioner John C. Richberg, of Illinois, Chairman;

The Torrens System and Registration of Land Titles: Commissioner Francis M. Burdick, of New York, Chairman;

Banks and Banking: Commissioner John R. Hardin, of New Jersey, Chairman;

Publicity: Commissioner W. O. Hart, of Louisiana, Chairman;

And special committees as follows:

Committee on Vital and Penal Statistics: Commissioner Francis L. Siddons, of the District of Columbia, Chairman;

Committee on Child Labor Legislation: Commissioner Hollis R. Bailey, of Massachusetts, Chairman;

Committee on Compensation for Industrial Accidents: Commissioner Hollis R. Bailey, of Massachusetts, Chairman.

The Commissioners have adopted a Constitution and By-Laws for the orderly regulation of their Annual Conferences and the transaction of the business calling them together. At the Chattanooga Conference, Commissioner Walter George Smith, of Philadelphia, Pennsylvania, was elected the President of the National Conference; Commissioner J. R. Thornton, of Alexandria, Louisiana, Vice-President; Commissioner Charles Thaddeus Terry, of New York, Secretary; Commissioner Talcott H. Russell, of New Haven, Connecticut, Treasurer; Commissioner M. Grunthal, of New York, Assistant Secretary.

The past work of the National Conference has produced:

A Negotiable Instruments Law, now the law of the States of Alabama, Colorado, Connecticut, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Arizona, New Mexico, the District of Columbia and the possession of Hawaii.

A Warehouse Receipts Act, now the law of the States of California, Connecticut, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia and Wisconsin; and the District of Columbia.

A Sales Act now the law of Connecticut, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island and Arizona, and which, having been considered at two annual meetings of the Pennsylvania State Bar Association, has been recommended for enactment by our State Legislature, and will be introduced at the coming session thereof in January, 1911.

At the 1909 session of the Conference of Commissioners two Acts were recommended for adoption by the Legislatures of the respective States; namely: the uniform Stock Transfer Act and the uniform Bills of Lading Act. These Acts have been printed by the Commissioners in one volume, together with the uniform Negotiable Instruments Act, the uniform Warehouse Receipts Act, and the uniform Sales Act, under one title of the "American Uniform Commercial Acts," of which we send your Excellency a copy, and of which copies will be hereafter furnished to each Senator and Representative of our State Legislature.

The Stock Transfer Act has been adopted by the States of Louisiana, Maryland and Massachusetts, and the Bill of Lading Act by the States of Maryland and Massachusetts, but as they have only recently been recommended for adoption, and as most of the legislatures sit in the odd year, these Acts have not as yet been generally presented.

The object of these two Acts is to make bills of lading and stock certificates negotiable as far as possible, and to assimilate the law concerning them, so far as may be, to the law concerning negotiable instruments as regards the transfer of title.

The five Acts published as the "American Uniform Commercial Acts" cover substantially all the documents which are ordinarily used in commercial dealings as instruments of title. Their adoption, therefore, will go far to relieve the transaction of interstate business from the embarassment which results from the different laws of the States heretofore prevailing. Your Commissioners trust that the General Assembly of Pennsylvania will pass these Acts as promptly as it has the Negotiable Instruments and Warehouse Receipts Acts, and that your Excellency will see fit to recommend their careful consideration at the approaching meeting of the State Legislature.

The matter of a workmen's compensation Act has been most prominently brought before the people of the United States during the past year. At the suggestion of the great conference held in the City of Washington, D. C., January 5, 6 and 7, 1910, called at the instance of the National Civic Federation, in urging a strong movement for national unity, the Conference of Commissioners has taken up this subject of compensation for industrial accidents, and has appointed Commissioners Hollis R. Bailey, of Massachusetts; John H. Wigmore, of Illinois; Aldis B. Browne, of the District of Columbia; Charles Thaddeus Terry, of New York; John R. Hardin, of New Jersey; Peter W. Meldrim, of Georgia; and George Whitelock, of Maryland, a special committee, which is now engaged in the consideration of this important subject.

It is noteworthy that at the annual meeting of the Pennsylvania Bar Association in 1910, a resolution was adopted that the Association would ask the Legislature of Pennsylvania to authorize the appointment of a Commission to inquire into the working of the present law regulating the liability of employers for industrial accidents, and the comparative justice, merits and defects of the laws of other States and countries relating to the subject, as well as the causes of such accidents; with power in said Commission to recommend such new law or laws as it may deem wise, having due regard to the constitutionality of the same, to the end that the defects in our present laws, if any be found to exist, may be effectively remedied. Said commission to be appointed by the Governor, and to consist of three members of the Senate and three members of the House of Representatives of the State of Pennsylvania, two leading employers of labor, two members of trade organizations to represent the workmen of Pennsylvania, an expert in the science of political economy, and a representative of the charitable organizations of the State, familiar with the conditions of wage-earners and the unemployed, such an appropriation of money from the State Treasury being made for the expenses of the said Commission as may be necessary in order that it may be able to do its work thoroughly and effectively.

The Conference at its session at Chattanooga in the present year recommended two Acts for adoption by the respective States; first: an Act concerning the recognition of foreign wills, providing that where a will is executed without the State in the mode prescribed by law either of the place where the will is executed or of the testator's domicile, it shall be of the same effect as if executed in the mode prescribed by the laws of this State, provided it is in writing and subscribed by the testator; and second: an Act relating to desertion and non-support of wife by husband, or of children by either father or mother, and providing punishment therefor; and to promote uniformity between the States in reference thereto, which act is annexed as an exhibit to this Report. It will, however, require to be considerably modified before it can be offered for enactment by our State Legislature.

The National Conference called at the instance of the National Civic Federation was not a meeting of the National Civic Federation itself, but was the result of the constitution of a Uniform Legislation Committee of the Federation, of which the Honorable Alton B. Parker, of New York, was the Chairman, and the following were members:

Prof. George W. Kirchwey, Dean of Columbia Law School, New York;

Hon. Morgan J. O'Brien, ex-Judge Supreme Court, New York.

Dr. James Barr Ames, Dean of Harvard Law School, Cambridge.

Hon. Amasa M. Eaton, President Conference of Commissioners on Uniform State Laws, Providence;

Thomas W. Shelton, Esq., Attorney, Norfolk;

Hon. Charles J. Bonaparte, former Attorney-General, Baltimore;

Frederick W. Lehmann, Esq., President American Bar Association, St. Louis.

Willard Saulsbury, Esq., member Delaware Council American Bar Association, Wilmington;

John Bell Sanborn, Esq., member American Bar Association, Madison;

Dr. William P. Breen, member Executive Committee American Bar Association, Fort Wayne;

Dr. Hannis Taylor, Professor of Law, George Washington University, Washington;

Moorfield Storey, Esq., ex-President American Bar Association, Boston;

Dr. Henry St. George Tucker, ex-President American Bar Association, Lexington, Virginia;

Francis Lynde Stetson, Esq., Attorney, New York;

Dr. Henry Wade Rogers, Dean of Yale Law School, New Haven;

Hon. Lawrence Maxwell, Jr., ex-Solicitor-General, Cincinnati;

John G. Milburn, Esq., member American Bar Association, New York;

Stephen S. Gregory, Esq., member American Bar Association, Chicago.

Dr. Charles Noble Gregory, Dean of University of Iowa Law School, Iowa City;

Hon. Charles B. Aycock, Attorney, Goldsboro;

Prof. Francis E. Burdick, member New York Commission on Uniform Laws, New York;

Lawrence Cooper, Esq., member Alabama Council American Bar Association, Huntsville;

Frederick P. Fish, Esq., Attorney, Boston;

Walter L. Fisher, Esq., President Conservation of National Resources, Chicago;

William O. Hart, Esq., member Louisiana Commission on Uniform Laws, New Orleans;

Hon. Peter W. Meldrim, member Executive Committee, Commissioners on Uniform State Laws, Savannah;

Dr. Frederick M. Judson, member Bar Association, St. Louis.

Prof. William Minor Lile, University of Virginia Law School, Charlottesville;

Hon. Charles F. Manderson, ex-President American Bar Association, Omaha;

Col. George R. Peck, ex-President American Bar Association, Chicago;

Dr. J. H. Ralston, member American Bar Association, Washington;

Walter George Smith, Esq., Vice-President Conference of Commissioners on Uniform State Laws, Philadelphia;

Hon. Selden P. Spencer, member American Bar Association, St. Louis;

Hon. William H. Staake, Chairman Executive Committee, Conference of Commissioners on Uniform State Laws, Philadelphia;

Hon. Charles S. Thomas, member American Bar Association, Denver;

Prof. Bradley Martin Thompson, University of Michigan Law School, Ann Arbor;

Hon. George Turner, member American Bar Association, Spokane;

Prof. John Henry Wigmore, Dean of Northwestern University Law School, Chicago;

Prof. Westel W. Willoughby, Professor of Political Science, Johns Hopkins University, Baltimore;

Hon. Charles Thaddeus Terry, member New York Commission on Uniform State Laws;

Hon. Francis B. James, member Ohio Commission on Uniform State Laws.

We quote from the annual address of President Walter George Smith, of the National Conference of Commissioners, his reference to the Washington Conference, as follows:

"The cause of uniformity received great assistance by reason of the conference held under the auspices of the National Civic Federation, which began its sessions in Washington on January 17, 1910. The National Civic Federation is an organization which devotes itself to the advancement of the public interest by seeking through a comparison of views of representatives of all interests, to bring about a solution of the pressing questions that modern civilization has developed and our dual system of government in the United States has to some extent complicated. It seeks to bring together representatives of all organizations, whether of capital or labor, for a full, frank and amicable comparison of views, and it has already shown itself to have a powerful influence over public opinion. Following their own line of thought, some of the officers of the Federation conceived the idea of calling a conference on the subject of uniform legislation among the various states. Those who were not lawyers and some who were, were probably oblivious of the existence of the Conference of Commissioners on Uniform State Laws, but when their attention was called to its history and purposes, a very cordial cooperation in its work was promptly afforded it. The subject of the relations of this Conference to the work outlined by the Civic Federation on uniform laws was taken into careful consideration with

the Executive Committee, and, as a result, membership in the Federation was accepted by many of the Commissioners from the different States who were consulted in preparing the program and in the management of the Washington meeting. At that meeting, after the purpose of the Conference had been outlined by the Honorable Seth Low, of New York, and the large and intelligent body of delegates had listened to approving addresses by President Taft and Governor Willson, of Kentucky, the Honorable Alton B. Parker, of New York, was chosen President of the Conference. The business sessions were opened by an address from your President, who endeavored to present the full scope and significance of the national movement for uniform state laws as conceived by the American Bar Association and developed by this Conference. He explained in outline the five commercial Acts, as well as the Divorce Act, and at the close of the Conference resolutions were adopted recommending to all of the States the adoption of four of the commercial acts as well as the Uniform Divorce Act, and urging that suitable appropriations be made for the Commissioners, and that the States that had not yet appointed them should appoint Commissioners. Not the least important of the resolutions was one recommending that wherever amendments to any of the uniform acts were proposed, they should first be submitted to the National Conference of Commissioners.

"At the same time that this Conference was in session, the Governors of more than thirty of the States were also meeting in Washington, and the resolutions were submitted to that body by a committee from the conference of the Civic Federation in a very strong and lucid address by Mr. Low, as Chairman of the Committee on Resolutions. It is obviously of the first importance to the cause of uniformity that the Governors of the different States should be familiar with the purposes of this Conference and should lend their active aid to the work that it has in hand by urging upon their legislatures the passage of a law authorizing the appointment of Commissioners and appropriations for their expenses. Of the members of this Conference only those representing twenty-six States hold their offices by reason of legislative action and only in twenty-four states are appropriations made for their expenses, leaving twenty-four States whose Commissioners pay their own expenses and who serve only on request of their Governors. It is, therefore, peculiarly gratifying to those who have the cause of uniformity at heart that this opportunity should have been afforded of presenting the subject personally to the Governors of so many of the States. The resolutions adopted by the Washington Conference, indicating as they do the conclusions of thoughtful men and women representing such different interests, seemed to be of sufficient value in themselves to warrant their being made the subject of individual consideration by the members of this Conference, and I have, therefore, added them in the appendix to this address.

"It will be noted that the Washington conference refrained from expressing approval of the Transfer of Stock Act. This must not be interpreted as indicating any disapproval of the provisions of this act, but merely that it was withheld for further consideration owing to the fact that certain New York interests had not reached definite

conclusions with regard to some of the provisions of the Act, and other interests have done all in their power to defeat this and other of the commercial acts approved by this Conference because of the definition of value. The same influences that have opposed the adoption of this definition before the Committee on Commercial Law and this Conference, presented their protest to the Washington Conference and, therefore, it was with full knowledge that the principle was approved by that conference."

Your Commissioners would also report to your Excellency that the Uniform Divorce Bill, the result of the labors of the Divorce Congress at its meeting held in January, 1906, in Washington, D. C., and in November, 1906, in Philadelphia, Pennsylvania, has received the approval of the Conference of Commissioners on Uniform State Laws, and the Commissioners of the respective States were urged to do their utmost to secure its adoption by the legislatures of their respective states. This Uniform Divorce Bill was submitted to the legislatures of 1907 and 1909, but did not on either occasion reach a report out of Committee which would secure either its approval or disapproval by our State Legislature. The law has been adopted by our neighbors of the States of Delaware and New Jersey and by the State of Wisconsin. Portions of this uniform law have also been adopted in other states as additions to or amendments of their existing divorce laws. The Commissioners on Uniform State Laws have felt that

> "So long as divorce statutes are to remain, it behooves the Commissioners to lend their efforts to obtaining the adoption of the jurisdictional provisions of the Uniform Act where public sentiment is not yet sufficiently educated to the acceptance of the entire act. The States being foreign to each other in all matters relating to divorce, there will remain uncertainty as to the validity of divorces with all the accompanying evils of a doubtful status of the parties and of danger to the legitimacy of children and property interests so long as the statutes of the States are not uniform on the subject of jurisdiction. In some States a foreign decree will not be recognized where no jurisdiction has been acquired from domicile or by personal service. In the great majority of states it is not demanded that both parties should be subject to the jurisdiction either by reason of domicile or by personal service, and since the decision of the Supreme Court of the United States in Haddock vs. Haddock, it leaves the status of the parties worse than doubtful.
>
> "As is well known, the Divorce Congress believed that they chose the lesser of the evils by adopting the theory that jurisdiction should be granted where one of the parties was a resident of the State, under careful restrictions as to the place where the cause arose and as to

service of notice either personally or by publication. It is confidently believed that the adoption of these sections will put an end to those divorces known as migratory, which, while comparatively not great in number, are peculiarly redolent of scandal.

"There is no problem before the public of more radical concern than divorce."

In the report of your Commissioners for the year 1907, it was stated:

"A partial codification following the adoption of such uniform laws by the various State legislatures is especially needed in this country, where there are more than fifty courts of last resort, independent of each other and with no other means than this of bringing about a reconciliation of their differing opinions. It is to be hoped that in the decision of cases arising under our uniform laws, these courts will strive to follow the decisions of the same questions in other states that have adopted the same laws, rather than to follow their own previous decisions, which it is manifest the uniform laws were intended to supersede by the adoption of a principle of the law that all the State courts should follow. In this way, these courts can do their share in our work of harmonizing and making uniform the law on such subjects throughout the country."

Your Commissioners most emphatically renew this suggestion.

Your Commissioners further trust that your Excellency may see fit to recommend to the legislature of the Commonwealth a renewal of the appropriation made in 1909 for the payment of the actual outlay of the Commissioners appointed to represent the Commonwealth and towards the expenses of the National Conference of Commissioners.

All of which is

Respectfully submitted by

WILLIAM H. STAAKE, Chairman,
WALTER GEORGE SMITH,
ROBERT SNODGRASS.

Commonwealth of Pennsylvania.

REPORT OF THE COMMISSIONERS ON

Uniform State Laws

TO THE GOVERNOR OF PENNSYLVANIA

WILLIAM H. STAAKE, *Chairman*

WALTER GEORGE SMITH : ROBERT SNODGRASS

Commissioners

HARRISBURG:

C. E. AUGHINBAUGH, PRINTER TO THE STATE OF PENNSYLVANIA

1913.

REPORT

To His Excellency.

The Honorable John Kinley Tener,

Governor of the Commonwealth of Pennsylvania.

Sir:—The undersigned Commissioners for the Promotion of Uniformity of Legislation in the United States, appointed under the provisions of the act of the General Assembly of the Commonwealth of Pennsylvania approved the eighth day of May, 1909, by his Excellency, Governor Edwin S. Stuart, which act was supplemental to the act of the twenty-third day of May, 1901, would

Respectfully Report:

Since the last report of the Commissioners, they have attended the twenty-first annual conference of the Commissioners on Uniform State Laws held at Boston, Massachusetts, August 23, 24, 25, 26 and 28, 1911, and the twenty-second annual conference of the Commissioners on Uniform State Laws held at Milwaukee, Wisconsin, August 21, 22, 23, 24 and 26, 1912.

At the Boston conference, the Commonwealth of Pennsylvania was represented by Commissioners William H. Staake and Walter George Smith, of Philadelphia, and Robert Snodgrass, of Harrisburg. At the Milwaukee conference, Commissioners Staake and Smith were in attendance; Commissioner Snodgrass, by reason of an unexpected death which required his presence in Harrisburg, was prevented from attending, as he had intended.

Under our form of government, the States are independent in matters of local legislation. The inevitable result has been great conflict in the laws of the various States upon matters in which there ought to be uniformity. This resulted in so much embarrassment that in the year 1889, the American Bar Association appointed a special committee, which recommended to the Association, that a committee of one from each State should meet in convention from time to time and compare and consider the laws of the different States, especially those relating to marriage and divorce, descent and distribution of property, acknowledgment of deeds and execution and probate of wills.

The following year the Legislature of New York passed an act authorizing the appointment by the Governor of three commissioners, to be known as "Commissioners for the Promotion of Uniformity of

Legislation among the States," and making it their duty to examine the subjects of marriage and divorce, insolvency, the forms of notarial certificates, and other subjects, and to ascertain the best means to effect an assimilation and uniformity in the laws of the States and to consider whether it would be wise and practicable to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.

As a result there has been established the present National Conference of Commissioners on Uniform State Laws. The conference is made up of commissioners appointed by the Governors of the different States. Usually there are three commissioners appointed from each State participating in the conference. A large number of the States have special acts authorizing the appointment of such commissioners, who are usually appointed for a term of five years. In this Commonwealth, beginning with the year 1901, the appointment has been for a term of four years, the re-appointments being made in 1905 and 1909, so that the term of the present commissioners will expire in May, 1913. The expenses of the National Conference, as well as the expenses of some of the commissioners from each State, are met by an appropriation for that purpose by some of the Legislatures and by contributions from the American Bar Association and certain State Bar Associations. The number of States, Territories, Federal Districts and possessions now represented in the conference is 53; being States, 48; Territories, 2; Federal Districts, 1; possessions, 2; so that now every State, Territory, District and possession of the United States is represented at this very important National conference of commissioners.

The time of the twenty-first conference was principally taken up in the consideration of the draft of an act to make uniform the law of the incorporation of business corporations, the act relating to marriage and marriage licenses, the draft of a workmen's compensation act, the draft of a uniform child labor law, the discussion of an act on partnership, and the draft of an act relative to the probate of foreign wills.

At this conference the draft of the proposed child labor legislation act was finally approved and recommended for adoption to the various States. The act relating to marriage and marriage licenses was also finally approved by the conference which also recommended for adoption in the various States the Federal Food and Drug Act of 1906. The Workmen's Compensation act was recommitted to the Committee for further consideration at the twenty-second conference. The committee on commercial law was directed to report their recommendations in reference to the draft of an act to make uniform the law on partnership and also to take up the subject of

ousiness associations other than common law partnerships and corporations with a view of preparing a statute on that subject. The commissioners of States where the Torrens system for the registration of land titles is in force were requested to present to the committee on that subject a statement respecting the working of that law in their respective States. The committee on a uniform incorporation law was directed to prepare and print a third tentative draft of such law with a digest and analysis of the incorporation laws of the various States and distribute the same prior to the next conference at which such tentative draft was presented for action. The committee on wills, descent and distribution was instructed to prepare an annotated draft of the act relative to the probate of foreign wills which was to be submitted at the twenty-second conference.

At the twenty-second conference held in Milwaukee, the time of the conference was largely taken up in the consideration of the proposed amendments to the Negotiable Instruments Law, the draft of an act on the subject of marriages in another State or country in evasion or violation of the laws of the state of domicile, the third tentative draft of an act to make uniform the law of the incorporation of business corporations, the draft of a workmen's compensation act, the discussion of the uniform partnership act, the Torrens system of the registration of land titles and the report of the committee on the situs of real and personal property for purposes of taxation.

The proposed amendments to the negotiable instruments law were recommitted to the committee on commercial law for further consideration and report at the twenty-third conference. The draft of an act relating to and declaring void marriages in another State or country in evasion or violation of the laws of domicile was finally approved by the conference. The third tentative draft of an act to make uniform the law of the incorporation of business corporations was considered at length and recommitted to the committee on uniform incorporation laws for further action. The draft of a uniform partnership act was also recommitted to the committee on commercial law, with directions to report at the twenty-third conference: and the committee was authorized, in its discretion, to prepare and report a uniform limited partnership act. The compulsory workmen's compensation act offered by the special committee on compensation for industrial accidents was approved tentatively, and the committee continued. The report of the committee on the situs of real and personal property for purposes of taxation was discussed at length, and received, and the committee continued with instructions to give further consideration to the subject and to report at the twenty-third conference.

The twenty-first annual conference at Boston was presided over by Commissioner Walter George Smith, of Pennsylvania, who had been elected president of the conference in the year 1909. His term expiring at the twenty-second conference, Charles Thaddeus Terry, of New York, was elected in his stead.

Commissioner William H. Staake, of Pennsylvania, has been Chairman of the Executive Committee of the National Conference since the year 1903.

The scope of the work of the Conference is indicated by its standing and special committees, as follows:

1. Executive Committee.

Appointed Members.

William H. Staake, Pennsylvania, Chairman.
James R. Caton, Virginia.
Nathan William MacChesney, Illinois.
Seneca N. Taylor, Missouri.
C. A. Severance, Minnesota.

Ex-officio.

Charles Thaddeus Terry, New York, President.
John Hinkley, Maryland, Vice-President.
Talcott H. Russell, Connecticut, Treasurer.
Clarence N. Woolley, Rhode Island, Secretary.
Walter George Smith, Pennsylvania, Ex-President.

2. Commercial Law.

Talcott H. Russell, Connecticut, Chairman.
W. O. Hart, Louisiana.
Walter George Smith, Pennsylvania.
George Whitelock, Maryland.
A. T. Stovall, Mississippi.
Samuel Williston, Massachusetts.
T. Moultrie Mordecai, South Carolina.

3. Wills, Descent and Distribution.

W. O. Hart, Louisiana, Chairman.
W. A. Blount, Florida.
Francis M. Burdick, New York.
H. H. Wilson, Nebraska.
A. V. Cannon, Ohio.
Manuel Rodriguez Serra, Porto Rico.
Marvelle C. Webber, Vermont.

4. Marriage and Divorce.

Edward W. Frost, Wisconsin, Chairman.
Walter George Smith, Pennsylvania.
Seneca N. Taylor, Missouri.
F. L. Siddons, District of Columbia.
Ernst Freund, Illinois.
George B. Young, Vermont.
W. V. Tanner, Washington.

5. Conveyances.

Amasa M. Eaton, Rhode Island, Chairman.
Wallace Batchelder, Vermont.
Edward Lees, Minnesota.
Clinton O. Bunn, Oklahoma.
Henry C. Hall, Colorado.
M. G. Cunniff, Arizona.
John Hinkley, Maryland.

6. Depositions and Proof of Statutes of Other States.

Frederick G. Bromberg, Alabama, Chairman.
John H. Voorhees, South Dakota.
F. M. Simonton, Florida.
Dan H. Ball, Michigan.
Henry Stockbridge, Maryland.
Emilio del Toro, Porto Rico.
L. L. Baker, Utah.

7. Insurance.

Frank Bergen, New Jersey, Chairman.
John C. Richberg, Illinois.
James R. Caton, Virginia.
Ralph W. Breckenridge, Nebraska.
Andrew A. Bruce, North Dakota.
Cyrenius P. Black, Michigan.
Carlos C. Alden, New York.

8. Congressional Action.

Aldis B. Browne, District of Columbia, Chairman.
E. Ray Stevens, Wisconsin.
George W. Bates, Michigan.
Oliver A. Harker, Illinois.
Merrill Moores, Indiana.
Mark A. Sullivan, New Jersey.
Benton S. Oppenheimer, Ohio.

9. Appointment of New Commissioners.

Seneca N. Taylor, Missouri, Chairman.
W. O. Hart, Louisiana.
Edgar Scurry, Texas.
D. A. McDougal, Oklahoma.
Charles D. Watson, Vermont.
Royal A. Gunnison, Alaska.
Edgar B. Stewart, West Virginia.

10. Purity of Articles of Commerce.

Walter E. Coe, Connecticut, Chairman.
Walter C. Clephane, District of Columbia.
Carlos C. Alden, New York.
Harry Eugene Kelly, Colorado.
Charles McCarthy, Wisconsin.
Cyrenius P. Black, Michigan.
J. W. Cutrer, Mississippi.

11. Uniform Incorporation Law.

John C. Richberg, Illinois, Chairman.
Erliss P. Arvine, Connecticut.
Charles E. Shepard, Washington.
Seneca N. Taylor, Missouri.
Hiram Glass, Texas.
Rome G. Brown, Minnesota.
Robert Snodgrass, Pennsylvania.

12. The Torrens System and Registration of Land Titles.

Eugene C. Massie, Virginia, Chairman.
John H. Wigmore, Illinois.
Nathan William MacChesney, Illinois.
Rome G. Brown, Minnesota.
E. Finley Johnson, Philippine Islands.
Charles W. Smith, Kansas.
A. V. Cannon, Ohio.

13. Banks and Banking.

John R. Hardin, New Jersey, Chairman.
Thomas A. Jenckes, Rhode Island.
Charles S. Lobingier, Philippine Islands.
Lynn Helm, California.
George W. Bates, Michigan.
E. Ray Stevens, Wisconsin.
Clarence N. Woolley, Rhode Island.

14. Publicity.

W. O. Hart, Louisiana.
Amasa M. Eaton, Rhode Island.
Eugene C. Massie, Virginia.

Special Committee on Vital and Penal Statistics.

F. L. Siddons, District of Columbia, Chairman.
Aldis B. Browne, District of Columbia.
Walter C. Clephane, District of Columbia.

Special Committee on Child Labor Legislation.

Hollis R. Bailey, Massachusetts, Chairman.
Amasa M. Eaton, Rhode Island.
C. A. Severance, Minnesota.
F. M. Simonton, Florida.
John H. Voorhees, South Dakota.

Special Committee on Compensation For Industrial Accidents.

Hollis R. Bailey, Massachusetts, Chairman.
John H. Wigmore, Illinois.
Aldis B. Browne, District of Columbia.
Hiram Glass, Texas.
John R. Hardin, New Jersey.
Peter W. Meldrim, Georgia.
George Whitelock, Maryland.

Special Committee on the Situs of Real and Personal Property For Purposes of Taxation.

Ernst Freund, Illinois, Chairman.
H. H. Ingersoll, Tennessee.
John H. Voorhees, South Dakota.
J. R. Thornton, Louisiana.
Edward Lees, Minnesota.

Special Committee to Co-operate with the American Institute of Criminal Law and Criminology.

John H. Wigmore, Illinois, Chairman.
W. A. Blount, Florida.
Charles W. Smith, Kansas.

Special Committee on a Uniform Law Relating to Boilers and Their Inspection.

C. A. Severance, Minnesota, Chairman.
A. V. Cannon, Ohio.
Carlos C. Alden, New York.
Ernst Freund, Illinois.
George B. Young, Vermont.

Special Committee on Expert Testimony in Criminal Proceedings.

Cyrenius P. Black, Michigan, Chairman.
Henry H. Ingersoll, Tennessee.
Dr. Charles McCarthy, Wisconsin.

Special Committee on Legislation Relating to the Use of the Flag.

George W. Bates, Michigan, Chairman.
Nathan William MacChesney, Illinois.
Henry C. Hall, Colorado.
Henry Stockbridge, Maryland.
W. O. Hart, Louisiana.

Special Committee on Computation of Time.

Francis M. Burdick, New York, Chairman.
Mark A. Sullivan, New Jersey.
Benton S. Oppenheimer, Ohio.

The past work of the Conference has produced a Negotiable Instruments Act now the law in

Alabama,
Arizona,
Colorado,
Connecticut,
Florida,
Idaho,
Illinois,
Iowa,
Kansas,
Kentucky,
Louisiana,
Maryland,
Massachusetts,
Delaware,
Michigan,
Missouri,
Montana,
Nebraska,
New Hampshire,
Nevada,
New Jersey,
New Mexico,
New York,
North Carolina,
North Dakota,
Ohio,
Oklahoma
Oregon,
Pennsylvania,
Rhode Island,
Tennessee,
Utah,
Virginia,
Washington,
West Virginia,
Wisconsin,
Wyoming,
Hawaii,
Philippine Islands,
District of Columbia.

A Warehouse Receipts Act now the law in

California,	Massachusetts,	Pennsylvania,
Colorado,	Michigan,	Rhode Island,
Connecticut,	Missouri,	Tennessee,
Illinois,	Nebraska,	Utah,
Iowa,	New Jersey,	Virginia,
Kansas,	New Mexico,	Wisconsin,
Louisiana,	New York,	District of Columbia,
Maryland,	Ohio,	Philippine Islands.

A Sales Act, now the law in

Arizona,	Massachusetts,	Ohio,
Connecticut,	New Jersey,	Rhode Island,
Maryland,	New York.	Wisconsin.

A Divorce Act, now the law in

Delaware,	New Jersey,	Wisconsin.

A Stock Transfer Act, now the law in

Louisiana,	Maryland,	Massachusetts.
Ohio,	Pennsylvania,	

A Bills of Lading Act, now the law in

Connecticut,	Louisiana,	Ohio,
Illinois,	New York,	Massachusetts,
Iowa,	Maryland,	Pennsylvania.

An Act Relating to Wills Executed Without the State, now the law in

Kansas,	Wisconsin,	Michigan,
Washington,	Massachusetts,	Rhode Island.
Louisiana,		

A Family Desertion Act, now the law in

Kansas,	Massachusetts,	North Dakota.
Wisconsin,		

It should be noted that the Marriage, Child Labor, Wills and Family Desertion Acts have only been recently acted upon by the Conference, and that the Uniform Divorce Law was originally adopted by the National Divorce Congress called at the instance of the Commonwealth of Pennsylvania under the authority of a resolution of the General Assembly of the Commonwealth of Pennsylvania, introduced by the Honorable William C. Sproul, a Senator from the County of Delaware, in Pennsylvania, and approved on the sixteenth day of March, 1905 (P. L. 40), authorizing the Governor of Pennsylvania to communicate with the Governors of the several States requesting them to co-operate in the assembling of a Congress of delegates "for the purpose of examining, considering and discussing the laws and decisions of the several States upon the subject of Divorce, with the view to the adoption of a draft for the proposed general laws which shall be reported to the Governors of all the States for submission to the Legislatures thereof, with the object of securing, as nearly as may be possible, uniform Statutes upon the subject of Divorce throughout the nation. In obedience to this direction, the Governor of Pennsylvania invited the Governors of the other States of the Union to participate by the appointment of delegates, and it was an indication of the widespread interest taken in this subject that forty-two of the States, as well as the District of Columbia, were represented in this Convention.

Of the three States which were unrepresented, one of them, South Carolina, does not permit divorcement for any cause, and therefore it may be said with reasonable accuracy that only two of the forty-five States had failed to indicate an appreciation of the significance of the movement upon which the Congress had embarked. It was believed that never before, for any purpose, governmental or otherwise, had an official representation of so many States been gathered together in convention.

Two of the present Commissioners on Uniform State Laws, Messrs. Smith and Staake, were with Governor Pennypacker and the Honorable C. LaRue Munson, of Pennsylvania, the delegates to this important conference. Governor Pennypacker was the President of the Congress, Walter George Smith, the Chairman of its Committee on Resolutions; C. LaRue Munson, a Vice-President, and William H. Staake, the Secretary. This Congress, which met in the City of Washington, in February, 1906, subsequently met in the City of Philadelphia in November, 1906, where, after a discussion lasting through two days, the draft of the proposed law was finally settled, the Congress, at the adjourned meeting, not undertaking to make any essential departures from the resolutions adopted in February.

In the address to the President and Congress of the United States and Legislatures of the several States and Territories and the Commissioners of the District of Columbia, made by the Committee on Resolutions, it was stated that the Congress did not deem it advisable to attempt to regulate the mere details of procedure in divorce actions, and with a few exceptions, such details were not embraced either in the resolutions of the Congress or in the Uniform Divorce Law which it drafted and recommended for adoption in the various States.

While only three States have adopted the law, the laws of many States conform in particulars to the recommendations of the Congress. All sections of the law being taken from existing Statutes.

At the Conference of the Commissioners on Uniform State Laws held at Portland, Maine, in the year 1907, the uniform law recommended by the Divorce Congress was recommended by the Conference of Commissioners for adoption in the various States of the Union. Quite recently there has been a manifest revival of interest on the subject of Uniformity of Legislation, and the Commissioners from Pennsylvania have had frequent calls upon them for literature upon the subject of the work of the National Divorce Congress. Pennsylvania, which had not only recommended the assembling of the Congress, but had also appointed Commissioners to codify the then existing Divorce Laws of the Commonwealth, which Committee reported the result of its labors, has not seen fit to adopt the law either in its original form or in any modification thereof. The law was submitted to the Legislatures of 1907, 1909 and 1911, but did not, on any of these occasions, reach a report out of Committee, which would secure either its approval or disapproval by our State Legislature.

In the last report of your Commissioners made to Governor Stuart in the year 1911, reference was made to the National Conference which had been called at the instance of the National Civic Federation and was held in the City of Washington January 5, 6 and 7, 1910, which urged a strong movement for national unity in matters of legislation along the lines taken up by the Commissioners on Uniform State laws.

Your Commissioners still feel and believe that:

"So long as divorce statutes are to remain, it behooves the Commissioners to lend their efforts to obtaining the adoption of the jurisdictional provisions of the Uniform Act where public sentiment is not yet sufficiently educated to the acceptance of the entire Act. The States being foreign to each other in all matters relating to divorce, there will remain uncertainty as to the validity of divorces, with all the accompanying evils of a doubtful status of the parties and of danger to the legitimacy of children and property interests, so long as the Statutes of the States are not uniform on the subject of jurisdiction.

"In some States a foreign decree will not be recognized where no jurisdiction has been acquired from domicile or by personal service. In the great majority of States it is not demanded that both parties should be subject to the jurisdiction either by reason of domicile or by personal service, and since the decision of the Supreme Court of the United States in Haddock vs. Haddock it leaves the status of the parties worse than doubtful.

"As is well known, the Divorce Congress believed that they chose the lesser of the evils by adopting the theory that jurisdiction should be granted where one of the parties was a resident of the State, under careful restrictions as to the place where the cause arose and as to service of notice either personally or by publication. It is confidently believed that the adoption of these sections will put an end to those divorces known as migratory, which, while comparatively not great in number, are peculiarly redolent of scandal.

"There is no problem before the public of more radical concern than divorce."

In our large cities, especially, it is regretable to note how many divorces there are monthly being granted by the Courts of our Commonwealth. Your Commissioners may be pardoned if they suggest to your Excellency what they stated in the year 1907 and repeated in the year 1911:

"A partial codification following the adoption of such uniform laws by the various State Legislatures is especially needed in this country, where there are more than fifty courts of last resort, independent of each other and with no other means than this of bringing about a reconciliation of their differing opinions: It is to be hoped that in the decision of cases arising under our uniform laws these courts will strive to follow the decisions of the same questions in other States that have adopted the same laws, rather than follow their own previous decisions, which it is manifest the uniform laws were intended to supersede by the adoption of a principle of the law that all the State Courts should follow. In this way, these courts can do their share in our work of harmonizing and making uniform the law on such subjects throughout the country."

Your Commissioners most emphatically renew this suggestion.

Your Commissioners pray that your Excellency may see fit to recommend to the Legislature the adoption of the Sales Act and of the Uniform Divorce Law, and the other Acts enumerated in the schedule hereto annexed with such modifications in Acts not on commercial subjects as may be necessary to conform to the local conditions.

Your Commissioners further trust that your Excellency may, in your discretion, see fit to recommend to the Legislature of the Commonwealth the continuance of the Commission and a renewal of the

appropriation made in 1911 for the payment of the actual outlay of the Commissioners appointed to represent the Commonwealth and a proper share of the expenses of the National Conference of Commissioners.

All of which is

Respectfully submitted,

WILLIAM H. STAAKE, Chairman.
WALTER GEORGE SMITH,
ROBERT SNODGRASS.

Schedule of certain proposed Acts drafted by the Conference of Commissioners on Uniform State Laws and not yet passed in Pennsylvania.

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1. THE SALES ACT.

An Act entitled "An Act Relating to the Sale of Goods."

This is one of the five commercial acts known as the American Uniform Commercial Acts, the others being the Stock Transfer Act, the Negotiable Instruments Act, the Warehouse Receipts Act, and the Bills of Lading Act, all of which have passed in Pennsylvania. There has been no opposition to the Sales Act. In two Legislatures it reached final stages and failed of passage only because of congestion of business.

Note.

This act is based on the English Sales of Goods Act, for a history of which see report of the Pennsylvania Bar Association 1907, p. 187.

The argument in favor of adopting this act is thus expressed: (1) It is an advantage for any subject to be reduced to simple rules, as much of the mercantile law can be, and have it in this form. It is convenient both to business men and lawyers. (2) This reason has been sufficient to induce England to pass acts in regard to negotiable instruments, the sale of goods and other matters. In this country the reasons are far stronger by reason of the peculiar conditions arising from our political system, which are themselves the controlling reason for this whole movement for uniform legislation.

"It will be seen that State lines are more and more disregarded with the growth of commerce, and obviously it is desired that merchants should be safe in disregarding them. 'If the laws governing mercantile transactions are different in different States, however, commerce is hampered and injustice to individuals is likely to ensue from the assumption that well-known rules existing in the home State exist everywhere.'"

Some minor changes will be made in the law of every State which passes this act. Such changes are a concession made by each State to secure uniformity. Section 4 will introduce into Pennsylvania the provisions of the Seventeenth section of the Statute of Frauds by providing that sales above the limit of $500 must be expressed in writing unless something has been paid to bind the contract. This act has been passed in nine States.

2. THE UNIFORM MARRIAGE LAW.

This act was only completed in 1911 and has not yet been passed by any of the States. The effect of its adoption will be to make the obtaining of a license a necessary prerequisite for the validity of any marriage and will abolish common law marriages.

3. THE UNIFORM CHILD LABOR LAW.

This act is a mosaic of the best provisions of the law of all of the States that have child labor laws and may be considered a standard act.

4. AN ACT RELATING TO DESERTION AND NON-SUPPORT OF WIFE BY HUSBAND OR OF CHILDREN BY EITHER FATHER OR MOTHER.

is based upon the legislation of the District of Columbia making the offence a misdemeanor and therefore extraditable, punishing the offender with hard labor or giving him the opportunity to work under suspended sentence and providing for payment of his labor while in jail. The effect of the act would be to give the offender the option of working for the support of his family for good wages outside of the prison or for inferior wages within. It has been passed by four States.

5. THE DIVORCE ACT.

This is the act drafted upon the principles approved by the National Divorce Congress and has been before the Legislature a number of times without reaching a final vote. It is confidently believed to be the best proposed legislation on this subject. It has been passed by Delaware, New Jersey and Wisconsin.

6. AN ACT PROVIDING FOR THE RETURN OF STATISTICS RELATING TO THE ANNULMENT OF MARRIAGE AND DIVORCE.

7. AN ACT PROVIDING FOR THE RETURN OF STATISTICS RELATING TO MARRIAGES.

The last two recited acts are of much importance in order to give accurate information for the study of these subjects.

8. AN ACT ON THE SUBJECT OF MARRIAGES IN ANOTHER STATE OR COUNTRY IN EVASION OR VIOLATION OF THE LAWS OF THE STATE OF DOMICILE.

This act was approved by the Conference in August, 1912. It is as follows:

Section 1. Be it enacted, etc., That if any person residing and intending to continue to reside in this State who is disabled or prohibited from contracting marriage under the laws of this State shall go into another State or country and there contract a marriage prohibited and declared void by the laws of this State, such marriage shall be null and void for all purposes in this State with the same effect as though such prohibited marriage had been entered into in this State.

Section 2. No marriage shall be contracted in this State by a party residing and intending to continue to reside in another State or jurisdiction if such marriage would be void if contracted in such other State or jurisdiction and every marriage celebrated in this State in violation of this provision shall be null and void.

Section 3. Before issuing a license to marry a person who resides and intends to continue to reside in another State the officer having authority to issue the license shall satisfy himself by requiring affidavits or otherwise that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.

Section 4. Any official issuing a license with knowledge that the parties are thus prohibited from intermarrying and any person authorized to celebrate marriage who shall knowingly celebrate such a marriage shall be guilty of a misdemeanor, and shall be punished by . . . .

This act, as its title implies, will stop existing scandal and absurdity in recognizing marriages forbidden by the law of the home State when performed in another jurisdiction.

9. AN ACT RELATIVE TO WILLS EXECUTED WITHOUT THIS STATE, AND TO PROMOTE UNIFORMITY AMONG THE STATES IN THAT RESPECT.

Section 1. Be it enacted, etc., That a last will and testament executed without this State in the manner prescribed by the law either of the place where executed or of the testator's domicile shall be

deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this State, provided said last will and testament is in writing and subscribed by the testator.

This act, if passed without modification, will change the law of this State as it affects charitable bequests and devises.

In addition to the foregoing acts the Legislature should pass an act providing for the continuance of the Commission which will expire on May 23rd, 1913, and also providing appropriation for its expenses the sum of $2,000 following established custom.

Commonwealth of Pennsylvania

REPORT OF THE COMMISSIONERS ON

UNIFORM STATE LAWS

TO THE

GOVERNOR OF PENNSYLVANIA

WILLIAM H. STAAKE, Chairman
WALTER GEORGE SMITH WILLIAM M. HARGEST
Commissioners

HARRISBURG, PA.:
WM. STANLEY RAY, STATE PRINTER
1915

REPORT

To his Excellency, the Honorable Martin Grove Brumbaugh, Governor of the Commonwealth of Pennsylvania:

Sir:

The undersigned, the Commissioners for the Promotion of Uniformity of Legislation in the United States, appointed under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania approved the 8th day of May, 1909, by his Excellency, Governor Edwin S. Stuart, which Act was supplemental to the Act of the 23rd day of May, 1901, would most respectfully report:

Since the last Report of the Commissioners, they have attended the Twenty-third Annual Conference of Commissioners on Uniform State Laws held at Montreal, in the Province of Quebec, Canada, on August 26, 27, 28, 29 and 30, 1913, and the Twenty-fourth Annual Conference of the said Commissioners held at Washington in the District of Columbia, October 14, 15, 16, 17 and 19, 1914.

The organization, work and purposes of the National Conference have been stated in previous reports made biennially since the first appointment of Commissioners in the year 1901. This conference is made up of Commissioners appointed by the Governors of the different States, meeting in conference and organizing themselves into a national body for the better accomplishment of the work for which its members were appointed by the individual States. The Commissioners, usually three from each State, are appointed by the Governors thereof as Commissioners on Uniform Legislation of their respective States, but with authority to confer with the Commissioners of other States and to recommend forms of bills or measures to bring about uniformity of laws in the excution and proof of deeds and wills, in the laws of bills and notes, marriage and divorce, and such other commercial and other subjects concerning which uniformity of laws in the individual states appears to be necessary and desirable.

The time of the Twenty-third Annual Conference was largely taken up in the consideration of the proposed amendments to the Negotiable Instruments Law, the drafts of the Compulsory and Elective Workmen's Compensation Acts, the Uniform Partnership Act, and the presentation of the reports of the standing and special committees of the Conference. The proposed amendments to the Negotiable Instruments Law, after lengthy consideration by the Conference, were

rejected. The Uniform Partnership Act was recommitted to the Committee on Commercial Law for further consideration and report, which, after such consideration, was reported to the Twenty-fourth Annual Conference, was adopted by it, and approved and recommended for adoption by the individual States. The Compulsory and Elective Workmen's Compensation Acts were approved tentatively by the Conference and recommitted to the Special Committee having them in charge for further consideration and report, which report was also made at the Twenty-fourth Annual Conference, when the Act was adopted, approved and recommended to the various States for their adoption.

The time of the Twenty-fourth Annual Conference was also largely taken up in the consideration of Acts to make uniform: (1) The law of business corporations; (2) The law of Partnership; (3) The regulation of the cold storage of certain articles of food; (4) The law governing workmen's compensation; (5) The form for the conveyance of land; (6) The law of acknowledgments to deeds, etc., taken outside the United States. The reports of several standing and special committees were also considered. The proposed Act relating to business corporations was recommitted to the Committee for further action. The following acts were adopted, approved and recommended to the various States for adoption:

The Uniform Partnership Act,

The Uniform Workmen's Compensation Act,

An act to make uniform the Law of Acknowledgments to deeds or other instruments taken outside the United States,

The Uniform Law relating to the cold storage of certain articles of food.

The following acts have been previously adopted, approved and recommended to the States for adoption:

The Negotiable Instruments Act; the Warehouse Receipts Act; the Bills of Lading Act; the Sales Act; the Stock Transfer Act; the Divorce Act; the Child Labor Act; the Family Desertion Act; the Marriage License Act; the Marriage Evasion Act; the Probate of Wills Act.

Through special committees the Conference co-operates with the American Institute of Criminal Law and Criminology and the American Judicature Society.

The Uniform Partnership Act has passed the Senate and House of Representatives at the present session in 1915, and has been approved by your Excellency, and is now a part of the law of the Commonwealth.

The Negotiable Instruments Act, the Warehouse Receipts Act, the Bills of Lading Act and the Stock Transfer Act are already a part of the law of our Commonwealth.

The Conference at Montreal was attended by all of the Pennsylvania Commissioners, namely, William H. Staake, Walter George Smith, and Robert Snodgrass. Our fellow-Commissioner, Honorable Robert Snodgrass, of Harrisburg, Pennsylvania, died on the 8th day of November, 1913, and in apreciation of him, the Conference of 1914 adopted the following minute; viz.:

"WILLIAM M. HARGEST of Pennsylvania:

Our distinguished fellow-Commissioner, Robert Snodgrass, of Harrisburg, Pennsylvania, died on the 8th day of November, 1913, and in appreciation of him we report this minute:

Robert Snodgrass was born on the 12th day of October, 1836, and was admitted to the Bar of Dauphin County, Pennsylvania, May 5, 1863. By his energy, ability, industry and study, he soon acquired the leading position which, until the time of his death, he continued to occupy.

He served as Deputy Attorney-General of this State from January 16, 1882, to March 11, 1887, and by the distinguished discharge of the duties of that office impressed himself upon the Bar of Pennsylvania.

Robert Snodgrass was not only an able lawyer, but he was a devoted student of the law. He loved the law, its profession and its practice; he dedicated himself to its improvement and to the advancement of the legal profession. He was intolerant of any tendency to lower the standard of legal education or to depart from the highest ideals of legal ethics. He was always willing and ready to aid the law student or to help the young lawyer.

Therefore, it was natural that he was early chosen by the court of his own county as a member of the Board of Examiners of the Bar, in which capacity he served for nearly thirty years, until his death, fourteen years of which he was president of the Board.

It was equally natural when the State Board of Law Examiners was created in the State of Pennsylvania that the Supreme Court should select him as one of its members and in this capacity he served thirteen years until the date of his death.

When the Bar Association of his own county was organized, Robert Snodgrass was unanimously chosen as its first President and was kept in that office as long as he consented to serve, a period of about eight years.

His interest in and anxiety for the advancement of the profession of the law led him into the activities of the Pennsylvania State Bar Association, of which he was a charter member, and in that body he was not only elected as its president, but served a number of years as the chairman of its Committee on Legal Education.

That same interest prompted him to service in the American Bar Association.

In April, 1905, Mr. Snodgrass was appointed a Commissioner on Uniform State Laws.

He has been a conscientious, capable and painstaking member of this Conference.

His earnestness and ability have been impresed upon us; his amiability and sterling qualities have endeared him to us.

This Conference has lost a valued member, and the State of Pennsylvania a distinguished lawyer and useful citizen.

Therefore, in expression of the personal sorrow the members feel at this dispensation of Divine Providence in removing our brother from us, this minute is presented.

Mr. President, on behalf of the Commissioners from Pennsylvania, I move that this minute be filed and a copy of it be transmitted to his family.

The motion was seconded.

PRESIDENT TERRY:

Now that the resolution has been made and seconded, I will ask those who are in favor of its adoption to please rise. The motion seems to be and is unanimously carried. The minute is adopted; it will be spread on the minutes of this Conference and a copy sent to the family of our deceased member."

The Twenty-fourth Annual Conference, meeting at Washington, in the District of Columbia, was attended by Commissioners William H. Staake, Walter George Smith and William M. Hargest, who had been appointed by his Excellency John Kinley Tener as Commissioner to succeed the Honorable Robert Snodgress, deceased.

The National Conference of Commissioners is now made up of Commissioners from the following States, Territories, Districts and Possessions of the United States; viz:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illnois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Philippine Islands, Porto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

As indicating the subjects under consideration by the National Conference, we would state that it has the following officers and Committees:

President, Charles Thaddeus Terry, New York; vice-president, W. M. Crook, Texas; treasurer, Thomas A. Jenckes, Rhode Island; secretary, George B. Young, Vermont and an Executive Committee consisting of the officers and the following appointed members:

Eugene C. Massie, Virginia;

William H. Staake, Pennsylvania;

Nathan William MacChestney, Illinois;

Seneca N. Taylor, Missouri;

C. A. Serverance, Minnesota;

and committees on the following subjects:

Commercial Law; Walter George Smith, Pennsylvania, Chairman.

Wills, Descent and Distribution; W. O. Hart, Louisiana, Chairman.

Marriage and Divorce; Edward W. Frost, Wisconsin, Chairman.

Conveyances; John R. Hardin, New Jersey, Chairman.

Depositions and Proof of Statutes of Other States; Peter W. Meldrim, Georgia, Chairman.

Insurance; Joseph Madden, New Hampshire, Chairman.

Congresisonal Action; Walter C. Clephane, District of Columbia, Chairman.

Appointment of New Commissioners; Seneca N. Taylor, Missouri, Chairman.

Purity of Articles of Commerce; Walter E. Coe, Connecticut, Chairman.

Uniform Incorporation Law; John C. Richberg, Illinois, Chairman.

The Torrens System and Registration of Land Titles; Eugene C. Massie, Virginia, Chairman.

Banks and Banking; James R. Caton, Virginia, Chairman.

Publicity; W. O. Hart, Louisana, Chairman.

Plan, Scope and Co-ordination; Charles Thaddeus Terry, New York, Chairman.

Uniformity of Judicial Decisions; Henry Stockbridge, Maryland, Chairman.

Special Committee on Vital and Penal Statistics; Walter C. Clephane, District of Columbia, Chairman.

Special Committee on Child Labor Legislation; Hollis R. Bailey, Massachusetts, Chairman.

Special Committee on Compensation for Industrial Accidents; Hollis R. Bailey, Massachusetts, Chairman.

Special Committee on Situs of Real and Personal Property for Purposes of Taxation; Ernst Freund, Illinois, Chairman.

Special Committee to Co-operate with the American Institute of Criminal Law and Criminology; John H. Wigmore, Illinois, Chairman.

Special Committee on Legislation Relating to the Use of the Flag; George W. Bates, Michigan, Chairman.

Special Committee on Computation of Time; Francis M. Burdick, New York, Chairman.

Special Committee on the Judicial Determination of Industrial Disputes; George B. Young, Vermont, Chairman.

Special Committee on the Uniform Reporting and Prevention of Occupational Diseases and of Industrial Accidents; Nathan William MacChesney, Illinois, Chairman.

Special Committee on a Uniform Law Providing for one day of rest in seven; J. Crawford Biggs, North Carolina, Chairman.

Special Committee on Uniform Automobile Legislation; Cyrenius P. Black, Michigan, Chairman.

Special Committee on Admission to Practice and Registration of Doctors and Nurses; A. V. Cannon, Ohio, Chairman.

Special Committee on Poor Laws; Carlos C. Alden, New York, Chairman.

Special Committee to Investigate the Subject of Laws Relating to Lynching and Report with Recommendations; John H. Wigmore, Illinois, Chairman.

Special Committee to co-operate with the Committee of the American Bar Association in the preparation of a Manual on Legislative Drafting; Charles E. Shepard, Washington, Chairman.

Special Committee on Laws Governing Construction and Maintenance of Highways; John Hinkley, Maryland, Chairman.

Special Committee to Revise the Constitution and By-Laws; Walter George Smith, Pennsylvania, Chairman.

Special Committee to co-operate with the American Judicature Society; Rome G. Brown, Minnesota, Chairman.

Special Committee on Boiler Inspection; C. A. Severance, Minnesota, Chairman.

The Commissioners from Pennsylvania have taken an active part in the deliberations and work of the Conference. The Senior Commissioner William H. Staake, originally appointed by Governor Stone in 1901, was, for twelve years Chairman of the Executive Committee of the Conference, and is still a member of that Committee, and of the Committee on Admission to Practice and Registration of Doctors and Nurses.

Walter George Smith was the President of the Conference 1909-1910, 1910-1911, 1911-1912; is now the Chairman of the Committee on Commercial Law and a member of the following standing and special committees.

Executive Committee;
Marriage and Divorce;
Torrens System and Registration of Land Titles;
Committee to Revise the Constitution and By-laws.

William M. Hargest is a member of the following Committees:
Purity of Articles of Commerce;
Law Governing the Construction and Maintenance of Highways.

It may be of interest to know that:

Forty-eight States, 2 Territories, 1 Federal District and 2 Possessions, being a total of 53 Jurisdictions of the United States of America, have appointed Commissioners on Uniform State Laws.

Forty-seven States have passed the Negotiable Instruments Law.

Thirty-one States have passed the Warehouse Receipts Act.

Eleven States have passed the Sales Act.

Nine States have passed the Stock Transfer Act.

Twelve States have pased the Bills of Lading Act.

Ten States have pased the Act Relating to Wills Executed without the State.

Eight States have passed the Act relating to Family Desertion.

But 3 States have passed the Uniform Divorce Act recommended by the Divorce Congress and approved by the Conference of Commissioners on Uniform State Laws, but a number of States have from time to time amended their laws so as to have them harmonize with the main provisions of the Uniform Divorce Law.

The Acts recommended by the Conference, known as the American Uniform Commercial Acts, cover substantially all the documents which are ordinarily used in commercial dealings as instruments of title.

The Uniform Sales Act has not yet been adopted in Pennsylvania. The Act is now pending before the present State Legislature, and your Commissioners earnestly hope it may adopt it in Pennsylvania as it has already been adopted in the States bordering on Pennsylvania; namely, Maryland, New Jersey, New York and Ohio.

It has been the practice of the National Conference of Commissioners to meet annually at the same place at which the American Bar Association meets, usually on the five days preceding the meeting of that Association. Most, if not all of its members are also members of the American Bar Association.

The Uniform Law relating to the Cold Storage of certain Articles of Food, has been recommended for adoption by the present Legislature and has been submitted to the appropriate Committee. Quoting from the address of President Terry of the Conference of Commissioners on Uniform State Laws on "The Necessity and the Demand for Clear and Uniform Laws," we would state:

"Any people, which craves freedom, will desire law. Just to the extent to which an intelligent appreciation of the blessings of freedom and the horrors of a dominion of fear has enlightened the people, to that extent do they insist upon the definition of their rights and obligations by law, and demand that such law shall be simple, clear and of universal application. Ultimately, every citizen, whether his pursuits be those of the scholar in the university, or of the toiler in

the hard school of experience, will concede the profound wisdom of the great disciple of the Great Teacher when he gave utterance to the phrase, "The perfect law of Liberty." The seeming paradox involved in the phrase, is, in truth, a startlingly plain statement of the sum total of all sound political science. It is the compact definition of a true democracy. It has never been improved upon, and it may be predicted boldly that it never will. Perfect law makes liberty; liberty inheres in perfect law.

The standard of perfection in law is attained precisely in the measure in which law is made simple, clear and uniform. The desired end is not, by any manner of means, attained when the law has been made simple and clear, though that be no mean accomplishment in itself. The law will fall far short of its province and remain fragmentary and unequal and, therefore, unjust in its application, unless and until it shall have been made universal or uniform in the respects of time and place. All individuals at all times, and in all places, at least so far as a single nation is concerned, must, if the function of law is to be adequately fulfilled, be in a position to know their rights and obligations, whether industrial or social, from the beginning to the end of any transaction upon which they may embark, and likewise in any place in which the incidents of such transaction may be called into question, irrespective of the geographical boundaries of the political divisions of their country.

In the United States, there are no such peculiarities of climate or location or racial distinction as would require the differentiation of the principles of law, or such as to justify the application of divergent or inconsistent rules and regulations to the citizens of different sections of the country, in their life, liberty and pursuit of happiness. In matters of interstate concern, it is now well understood that the geographical boundaries of the various commonwealths are only imaginary lines which cannot be allowed to interrupt or obstruct the working of principles which are in their very nature universal.

The soundness of this doctrine has been amply demonstrated in theory, and now we have ample proof of its soundness in practice, not only in the history of the uniform laws, which this body has promulgated, in their operation throughout the states, but also and particularly in the insistent demands of our citizens of every walk in life, that, if duties, privileges and remedies are to be properly safeguarded, the laws embodying them must be uniform in their application.

This work has for its goal the achieving of a purpose which both stimulates and enobles the workers. Its importance can hardly be over-estimated. To make uniform the law and, in the process, to clarify it, is a task worthy to enlist the best abilities of lawyers

of the highest ideals of duty. For the antithesis of law is force. Where law does not control, force will have its sway. Whether the relations be those of nations or of states, whether the law be international (if indeed there really be any such thing as international law), or interstate, the absence of uniform submission to it, the absence of uniform obligations and rights under it, spells anarchy.....

But perhaps more significant still, as marking the advance of the Conference along its chosen lines, has been the very widely extended and generally laudatory discussion of the history and proceedings of this body by laymen and lawyers alike, from the public platform, and in broadly circulated magazines and in the press throughout the country. It may be said without exaggeration that in no previous year of its existence has such thorough-going knowledge of, and such thorough-going interest in, the Conference and its activities been manifested.

In passing it may be remarked that the progress of the Conference, in power and grasp of its function, has in no respect been better demonstrated than in its considerate rejection of inducements presented to it to enter fields which would have carried it far away from its proper province.

To make uniform the laws of the various States, and in making them uniform, to make them clear and simple and certain! It is a great task, but it must be done. The demand for this juristic reform is loud and insistent. Who shall do it? How shall it be done? The one thing that is sure is, that our jurisprudence must, in these respects, receive immediate and proper attention.....

The Conference needs no defence. It needs simply to be understood and more widely understood. There is nothing spectacular about its methods, and hence it has taken years for its work to reach the consciousness of the country; but the day of its obscurity is past, and legislatures, state officials, and all individuals whose concerns transcend state lines, (and there are few whose concerns do not), not only know, but welcome heartily the efforts made by this conference in their behalf.

The workshop is in order, and it is manned by workers capable of forging the instruments to eliminate, from the body of our laws, the unnatural growths, to harmonize the discordant elements, to regulate the irregular practices, and in short to reduce to order the conflicting members, without the destruction of any one of them, which might be material, or valuable; and in all this, care is taken not to increase the body of the law. It is not more law which we want—but more uniform law.

The task is a long and difficult one. The responsibilities of it are impressive. The burden can only be sustained by the utmost self-sacrifice and unselfish devotion on the part of every commissioner.

Not the fitful work at annual conferences, not the casual attendance at occasional committee meetings, not a hasty glance at a proposed measure, as a basis for debating it on the floor of this hall, but consistent and continuous study through the year, thorough preparation for the expression of opinions when the time comes for discussion, the contribution of each one's best abilities to the work of his own committee, the conscientious devotion to the purposes for which the governors of our states have appointed us, in a word an earnest and unflagging consecration to our tasks here is what is needed now, more than any other one thing, and more than at any other time; because now is the time when we are entitled to reap from the fields whereon we have sown with patience and determination and much labor for upwards of twenty years. We are justified in expecting, in the next five years, as much in the way of concrete results as in all the twenty years gone before. That was the time of preparation. Now is the time of harvest. We must work—unremittingly—with a single purpose. Work! Not fitfully, not spasmodically, but unceasingly. Work!"

It is the judgment of your Commissioners that it is not advisable to have one Legislature consider for adoption too large a number of uniform Acts which have been recommended by the National Conference. It may be stated for information that the Pennsylvania Bar Association has for many years had a standing Committee on Uniformity of State Laws which reports to the members of the Association the action of the National Conference. The Uniform Acts which have been from time to time submitted for adoption by the State Legislature, as a rule have had the seal of approval of the members of the Pennsylvania Bar Association.

Therer are certain non-commercial Acts which should be taken up and passed as soon as possible; namely, the Uniform Marriage and License Act, the Marriage Evasion Act, the Probate of Foreign Wills Act and the Uniform Acknowledgments Act.

The Legislature of 1913 passed an Act "to continue the existence of Commisisoners for the promotion of uniformity of legislation in the United States provided for in the Act of the General Assembly of the Commonwealth of Pennsylvania approved the 23rd day of May Anno Domini one thousand nine hundred and one" which provided for the appointment by the Governor, by and with the advice of two-thirds of all members of the Senate, "three Commissioners learned in the law to constitute for an additional term of four years a Board of Commissioners, with the same powers, duties, privileges and obligations contained in the said Act of May twenty-third one thousand nine hundred and one, all the provisions of which said Act are hereby extended for a further period of four years." This Act was approved by Governor Tener on the twenty-eighth day of

May Anno Domini one thousand nine hundred and thirteen and is numbered 243 Laws of 1913, page 359; and the general appropriation Act at page 815 of the Laws of Pennsylvania, Session of 1913, in Section 30, contains an appropriation to the Commissioners on the part of Pennsylvania of the National Commission on Uniformity of Legislation for the payment of expenses and incidentals already incurred and to be incurred during the two years beginning June first, 1913, as members of said Commission, the sum of two thousand dollars, or so much thereof as may be necessary.

Your Commissioners would most respectfully suggest and request that a similar appropriation shall be made for the years 1915 to 1917 inclusive.

The Annual Conference of the Commissioners has during the past ten years met in the following places:

1905, Narragansett Pier, Rhode Island;
1906, St. Paul, Minnesota;
1907, Portland, Maine;
1908, Seattle, Washington;
1909, Detroit, Michigan;
1910, Chattanooga, Tennessee;
1911, Boston, Massachusetts;
1912, Milwaukee, Wisconsin;
1913, Montreal, Canada;
1914, Washington, District of Columbia;

and in 1915, the Twenty-fifth Annual Conference will be held at Salt Lake City, Utah, from August 10th to August 16th, inclusive. preceding the meeting of the American Bar Association on August 17th, 18th and 19th at the same place.

Respectfully submitted:

WILLIAM H. STAAKE,
Chairman of Commission.

WALTER GEORGE SMITH,
WILLIAM M. HARGEST.

Commonwealth of Pennsylvania

REPORT OF COMMISSIONERS

ON

Uniform State Laws

to the

GOVERNOR OF PENNSYLVANIA

WM. H. STAAKE, Chairman,
WALTER GEORGE SMITH,
WM. M. HARGEST,
Commissioners.

HARRISBURG, PA.
J. L. L. KUHN, PRINTER TO THE COMMONWEALTH.
1921

REPORT

To his Excellency, the Honorable William C. Sproul, Governor of the Commonwealth of Pennsylvania:

Sir: The undersigned, the Board of Commissioners on Uniform State Laws, appointed under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania approved the 20th day of April, 1917, P. L. 90, respectfully reports:

Since the last report of the Commissioners, they have attended the Twenty-ninth and Thirtieth Annual Conferences of Commissioners on Uniform State Laws held at Boston, Mass., in 1919, and at St. Louis, Mo., in 1920.

The organization, work and purposes of the National Conference which has been in existence since August 24, 1892, have been stated in previous reports, made biennially, since the first appointment of Commissioners in the year 1901. This Conference is made up of Commissioners from the different States, who have organized themselves into a national body for the better accomplishment of the work for which its members were appointed by the several States.

The National Conference of Commissioners on Uniform State Laws is now officially recognized, not only by all the States, but by the District of Columbia, Alaska, Porto Rico, Hawaii, and the Philippine Islands, representing fifty-three jurisdictions.

The Conference meets for a week, each year. It constitutes a remarkable body of men. Among the Commissioners are judges of the highest courts, professors of great prominence in the teaching of the law in the leading law schools, Congressmen, State senators and lawyers of outstanding ability. The present officers are: Honorable Henry Stockbridge, of the Court of Appeals of Maryland, President; George B. Young, of Vermont, Vice-president; Professor Eugene A. Gilmore, of the University of Wisconsin, Secretary, and W. O. Hart, of Louisiana, Treasurer.

The object of this Conference, as briefly set out in its constitution, is "to promote uniformity in State laws on all subjects where uniformity is deemed desirable and practicable."

The Conference is extremely careful, both as to the character and kind of legislation which it recommends. When any proposition is made to the Conference for the preparation of a uniform law on any subject, it is first submitted to a "Committee on Scope and Program," which determines whether the subject is one upon which uniformity should be attempted, and many requests for the consideration of uniform laws get no further than a reference to that Committee.

When it is deemed advisable to have a uniform law on any subject, the matter is referred either to a standing committee or a special committee appointed for the purpose of having a tentative draft of such an act prepared. In acts of importance such as those relating to Negotiable Instruments, Partnership, Sales, and other commercial laws, the committee employs an expert who examines the laws of various States and the decisions thereon, and who, with the committee, prepares a tentative draft, which is presented to the Conference. It is considered, section by section, and is then referred back to the committee, with such amendments as the Conference has adopted, because no Act can be recommended to the States as a uniform law until it has been considered by the Conference at two meetings. Many Acts have occupied most of the time of the Conference for several consecutive sessions. As an illustration, the Conference at its session in St. Louis, this year, referred back to the committee the seventh tentative draft of a Uniform Incorporation Act and, after some further amendment, recommended the fifth draft of an Act relating to Occupational Diseases. Most of the important laws come before the Conference three or four times before they reach a degree of perfection which will satisfy that body. After an Act of Assembly has been subjected to the scrutiny of the able men who compose the Conference, it cannot be recommended for adoption unless it is approved by a vote of the Commissioners, voting by States, and receives the affirmative vote of the majority of the States voting, and, in no case, unless it receives the affirmative vote of at least fifteen States.

The Conference has recommended many important laws which have been adopted in many States. The Negotiable Instruments Law recommended in 1896, has been adopted in every jurisdiction except Georgia and Porto Rico. The Warehouse Receipts Act, recommended in 1906, has been adopted in forty-five jurisdictions. The Sales Act, recommended in 1906, and the Bills of Lading Act, recommended in 1909, have been adopted in twenty-three jurisdictions. The Stock Transfer Act, recommended in 1909, has been adopted in fourteen jurisdictions. The Family Desertion Act, recommended in 1910, has been adopted in twelve jurisdictions and the Partnership Act, recommended in 1914, has been adopted in eleven jurisdictions. The Limited Partnership Act, although recommended in

1916, has been adopted in ten jurisdictions. The Act for the Extradition of Persons of Unsound Mind, recommended in 1916, has been adopted in seven jurisdictions. The Fraudulent Conveyance Act, recommended in 1918, was adopted in 1919 by nine States and the Conditional Sales Act, recommended at the same time, was adopted in 1919 by six States.

In addition to the Acts just referred to, the following Acts have been recommended to make uniform the law on the subjects with which they deal:

Acknowledgments of Written Instruments Act.
Acts Relating to Wills Executed without the State.
Probate of Foreign Wills Act.
Marriage and Marriage License Act.
Marriage Evasion Act.
Family Desertion Act.
Pure Food Law.
Child Labor Law.
Foreign Acknowledgments Act.
Cold Storage Act.
Workmen's Compensation Act.
Laud Registration Act.
Foreign Depositions Act.
Proof of Statutes Act.
Flag Law.

This State has adopted the following uniform laws:

Negotiable Instruments Act.
Sales Act.
Warehouse Receipts Act.
Bills of Lading Act.
Stock Transfer Act.
Partnership Act.
Limited Partnership Act.

It is earnestly hoped that a number of uniform Acts may be adopted at the Session of the Legislature of 1921.

Respectfully submitted,

WILLIAM H. STAAKE, Chairman of Commission.

WALTER GEORGE SMITH,
WM. M. HARGEST,
Commissioners.

Commonwealth of Pennsylvania

REPORT OF COMMISSIONERS

ON

Uniform State Laws

to the

GOVERNOR OF PENNSYLVANIA

WM. H. STAAKE, Chairman,
WALTER GEORGE SMITH,
WM. M. HARGEST,
Commissioners.

HARRISBURG, PA.
J. L. L. KUHN, PRINTER TO THE COMMONWEALTH.
1923.

To his Excellency, Honorable Gifford Pinchot, Governor of the Commonwealth of Pennsylvania:

Sir: In accordance with the provisions of the Act of Assembly of April 20, 1917, P. L. 90, the undersigned, constituting the Board of Commissioners on Uniform State Laws, respectfully reports:

> This Act provides: "It shall be the duty of said board to examine such subjects as it may deem necessary, and to ascertain the best means to effect an assimilation and uniformity of State legislation throughout the United States relative to the subjects so examined; and said Board of Commissioners shall meet with the National Conference of Commissioners on Uniform State Laws, for the promotion of uniformity of legislation throughout the United States, at its annual or other sessions, and join with it in such measures as may be deemed most expedient to advance the objects of its appointment."

Since the last biennial report they attended the thirty-first and thirty-second annual conferences of the Commissioners on Uniform State Laws, held at Cincinnati, Ohio, in 1921, and at San Francisco, California, in 1922.

The National Conference of Commissioners on Uniform State Laws has been in existence since August 24, 1892. The Commissioners of Pennsylvania were first appointed in the year 1901. The Conference is composed of Commissioners from the different States, organized into a national body for the better accomplishment of their work. All the States are now represented and also the District of Columbia, Alaska, Porto Rico, Hawaii, and the Philippine Islands, making in all fifty-three (53) jurisdictions. The membership is fully representative, there being judges, law teachers, members of legislatures, congressmen and practicing lawyers of note.

The present officers are Nathan William MacChesney, Chicago, Illinois, President; Eugene C. Massie, Richmond, Virginia, Vice-President; George G. Bogert, Ithaca, New York, Secretary; W. O. Hart, New Orleans, Louisiana, Treasurer.

The object of the Conference as set forth in its Constitution, is "to promote uniformity of State laws on all subjects where uniformity is deemed desirable and practicable."

The Conference has a method of procedure which is intended to secure the greatest possible accuracy in the preparation of a uniform law. It is first submitted to a Committee on Scope and Pro-

gram to determine whether it is pertinent to the work of the Conference and one upon which uniformity is desirable. Having decided to consider it, the subject is referred to a standing committee or a special committee to have a tentative draft of an act prepared. Usually this work is done by an expert draughtsman specially versed in the law on the subject. The first tentative draft having been prepared and presented to the Conference, is considered section by section and then referred back to the committee for redrafting with such amendments as the Conference has adopted. By a standing rule no draft is sent out for adoption by the legislatures of the different States until it has been considered section by section by the Conference at two meetings. Frequently it has happened that years have been taken in the consideration of acts before they have attained the requisite perfection.

Among the commercial acts of most importance for which the Conference is responsible may be mentioned the Negotiable Instruments Act, recommended in 1896, adopted in every jurisdiction except Georgia and Porto Rico; the Warehouse Receipts Act, adopted in forty-eight (48) jurisdictions; the Sales Act adopted in twenty-five (25) jurisdictions; the Bills of Lading Act adopted in twenty-five (25) jurisdictions; the Stock Transfer Act adopted in fifteen (15) jurisdictions; and the Partnership Act adopted in fourteen (14) jurisdictions.

Pennsylvania has adopted the following: Negotiable Instruments Act, Sales Act, Warehouse Receipts Act, Bills of Lading Act, Stock Transfer Act, Partnership Act, and Limited Partnership Act, the Deposition Act, Fraudulent Conveyance Act, Proof of Statutes Act, ten in all.

At the Cincinnati meeting, the Conference, which was in session from August 24th until August 30th, 1921 was mainly engaged in a discussion of the preliminary drafts of a Uniform Incorporation Act and, a Uniform Fiduciaries Act, an Act Relating to the Status and Relation of Illegitimate Children, the Uniform Declaratory Judgments Act, a Uniform Mortgage Act and a Uniform Aviation Act. At the San Francisco meeting which was in session from August 2nd until August 8th, 1922, the time of the Conference was taken up mainly by consideration of these Acts, except that of the Uniform Incorporation Act, which was laid aside.

The Conference has recommended the four following additional Acts for passage by the Legislatures of the different States.

1. Uniform Declaratory Judgments Act, providing that courts of record within their respective jurisdictions shall have the power to declare rights, status and other legal relations whether or not further relief is, or could be claimed. No action or proceeding shall be open

to objection on the ground that a declaratory judgment or decree is prayed for. The declaration shall have the force and effect of a final judgment or decree.

2. Uniform Illegitimacy Act. This Act seeks to retain those provisions which have been approved by the experience of most of the States, the coercive features of the court proceedings have been preserved and strengthened.

3. Uniform State Law for Aeronautics. This Act has been prepared on the theory that the Federal Government will provide rules and regulations for licensing of craft and pilots, and is confined to the elementary principals concerning the lawfulness of flight, responsibility for damages and similar matters.

4. Uniform Fiduciaries Act. The object of this Act is to relieve persons dealing with a fiduciary from the heavy responsibility of a constructive inquiry into the good faith of the fiduciary. In practice such inquiries are impossible in the ordinary course of banking and commercial transactions and there is involved a risk which should be eliminated except in case of knowledge of fraud or personal advantage to the payee or recipient.

In addition to the four Acts above enumerated there were certain other amendments to commercial acts heretofore adopted. These amendments are intended to remove certain inconsistencies as to the extent of the negotiability of warehouse receipts, bills of lading, and stock certificates in the various uniform acts heretofore recommended by the National Conference.

The Uniform Sales Act and the Uniform Warehouse Receipts Act (in Pa. 1909) were adopted earlier than the Uniform Bills of Lading Act (in Pa. 1911) and the Uniform Stock Transfer Act (in Pa. 1911). Sections 32 and 38 of the Uniform Sales Act and Sections 40 and 47 of the Uniform Warehouse Receipts Act provided that negotiation may be made by anyone *intrusted* with a document in deliverable form and is not invalidated by breach of duty, fraud accident, mistake, duress or conversion. But Sections 31 and 38 of the Uniform Bills of Lading Act and Section 5 of the Uniform Stock Transfer Act protect a purchaser for value either from the thief or finder if the instrument is made or endorsed to him or is endorsed to blank. The amendments adopted therefore amend the sections of the Sales and Warehouse Receipts Act to agree with the rule later adopted in the Bills of Landing and Stock Transfer Acts, and make the documents covered by the earlier acts as fully negotiable as those dealt with in the later acts.

This Commonwealth, from the inception of the movement has given its hearty support to uniformity of legislation among the States on appropriate subjects. There have been biennial appropriations

of Two Thousand ($2,000.00) Dollars for many years, to cover the travelling and hotel expenses of the Commissioners and also a contribution to the Treasury of the Conference, usually fixed at Two Hundred and Fifty ($250.00) Dollars per annum. The Commissioners ask that this appropriation be continued.

At this time, when the sentiment of the country for simplicity, certainty and uniformity in subjects of interstate importance is growing stronger, it is essential, if the Commissioners from Pennsylvania are to carry on the good work which has been done in the past, to have the cordial support and cooperation of the legislature. No better way has yet been devised for obtaining uniformity in appropriate subjects than the plan of the Conference of Commissioners on Uniform State Laws. The undersigned earnestly hope that they will continue to receive the cordial support of Your Excellency and of the Legislature.

Respectfully submitted,

WILLIAM H. STAAKE, Chairman, of commission.

WALTER GEORGE SMITH,
WILLIAM M. HARGEST,
Commissioners.